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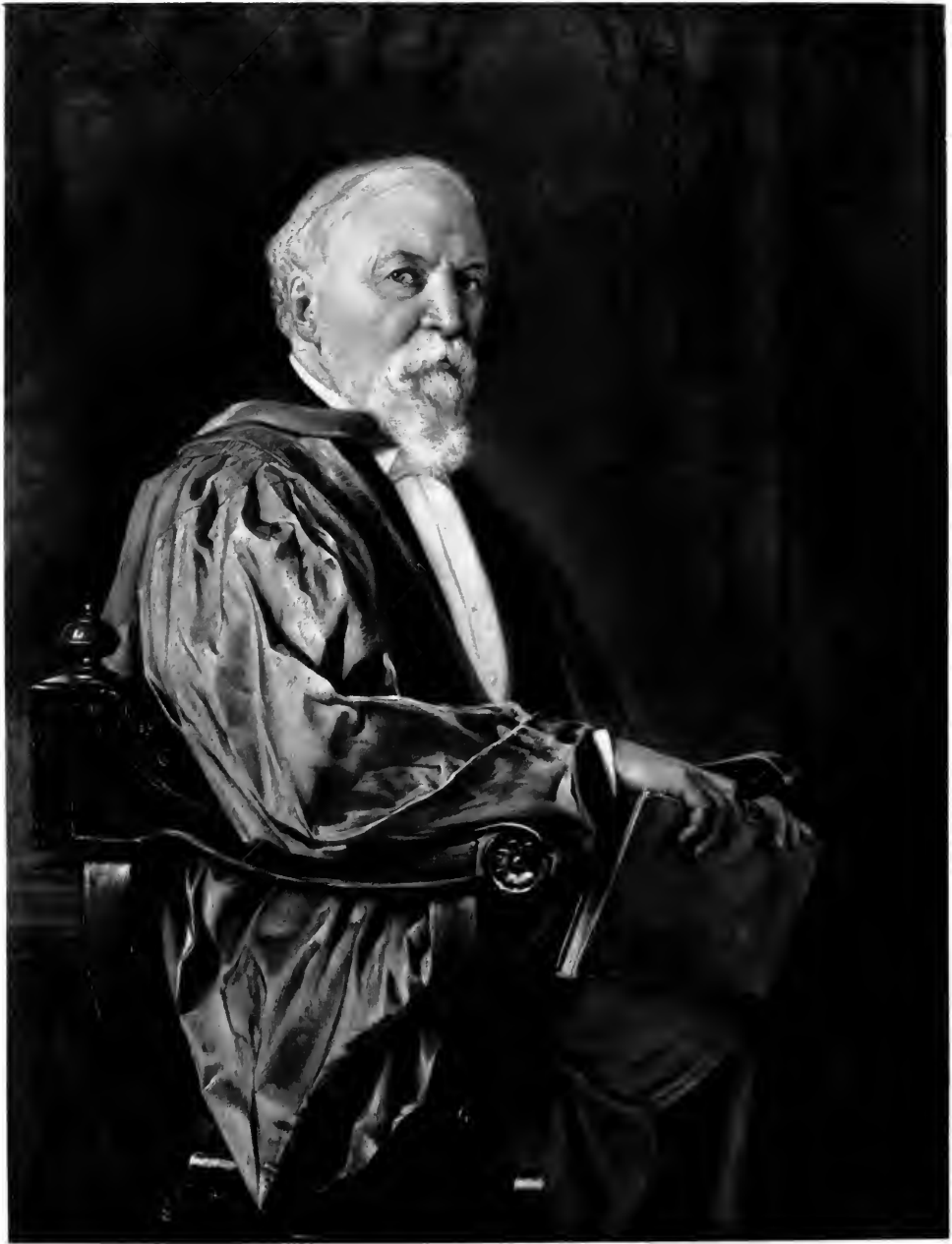
The Old Yellow Book was given to the library of Balliol College, soon after the poet's death, by his son, Mr. R. Barrett Browning; it is a somewhat blackened vellum-bound volume of about 10 by 7½ inches.

→ "old yellow book" is the name penned by Browning for a unique collection of pamphlets he had purchased at a Florentine bookstall in the Piazza di San Lorenzo, in JUNE of 1860.

→ this first reproduction has been made from photographic plates of the original.

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THE OLD YELLOW BOOK

SOURCE OF BROWNING'S

THE RING AND THE BOOK

IN COMPLETE PHOTO-REPRODUCTION

WITH

TRANSLATION, ESSAY, AND NOTES

BY

CHARLES W. HODELL



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GENERAL PREFACE.

The present volume has grown from an interest in *The Ring and the Book*, originating years ago in the instruction of Professor Hiram Corson. Under his direction I undertook a more intensive study of the spiritual significance of the poem, and embodied the result in my thesis for the doctorate, printed in 1894. The throbbing reality of the Franceschini tragedy in the poem raised persistent questioning. How far was it historical fact, how far the imagination of the poet? What were the contents of the book, so vividly described by the poet? Fleeting glimpses of the volume in two subsequent visits to England only served to strengthen my purpose to know Browning's Book in detail. Later on, by the courtesy of Balliol College, I was accorded the privilege of free access to the poet's treasure-trove. The significance of the mastery of Robert Browning and the vital humanity of his great work have grown upon me with each year of this study. I trust that this volume may have something of the same effect upon others, and I feel that it is an important document in any future elaboration of the theory of creative genius in literature.

When it became apparent that the work, if published with due completeness, must be issued by a subsidized press, I turned to the Carnegie Institution of Washington. The generous interest of its officers has enabled me to plan and execute the work without abridgment, and I am indebted to them for unceasing courtesies and assistance in bringing the book to its present issue.

As the book might be approached from various points of view, my purpose in publishing should be definitely stated. It is not to present a study of medieval criminal jurisprudence, though I have reason to believe that the book contains much to repay a student in this field; I have accordingly left without explanation all matters of this nature. Nor is the purpose to elucidate the fact of the Franceschini murder as a matter of

history; for the crime, as history, is of little value, and evidence in the case is but fragmentary. Stricter search of the archives in Arezzo and Rome than Browning could make might reveal further facts, but could not forward the purpose of the present volume. Nor is the purpose linguistic—to study the crabbed Latinity and the colloquial Italian of the volume. I have therefore felt that no glossary was needed, and have omitted etymological and philological annotation. Nor is the purpose to make a literary study of *The Ring and the Book*. Much that is most interesting and most vital in the poem has necessarily been excluded. Still further, although this volume is a source-study it does not present a theory of sources or a study of the more general aspects of the play of creative mind upon raw material. Certain *obiter dicta* of this kind have found natural place in the essay, but I have felt that there was no place for a full discussion of the general theory of sources.

But the present work has been designed primarily to place side by side the crude raw material of the Old Yellow Book and the completed art-product, *The Ring and the Book*, in illustration of the play of the creative mind of Robert Browning in this stupendous work of imagination—one of the most potent and masterful creative undertakings in English poetry since Shakespeare. Whatever makes clearer Browning's use of his material has had a place in the editing of the volume. All else is purely subsidiary, if not extraneous. The final outcome, it is hoped, will be to set in a truer light the mastership of Browning.

The plan of the volume has grown deliberately from the material before the editor, in his endeavor to present fully this extensive poem side by side with its equally extensive source-book, and yet to keep the volume as lucid and as easily usable as possible.

Of first importance is the reproduction of the Book itself, to secure the scholarly world against the possible destruction of the unique copy in the library of Balliol College. Photoreproduction was determined upon as most accurate and most interesting, even though it displayed the numerous typographical faults of the original. Certain defects due to creases

in the pages of the Book had to be cut in by hand; these are in no case conjectural emendations, but are corrections of a mechanical fault in the old pages. The old ink leaf-numberings in the upper right-hand corner have been clipped in photographing and are supplanted by the more convenient page-numberings in Roman at the bottom of the page.

A full translation is then included as a matter of convenience, and its principles are more fully set forth in a separate translator's preface.

After these two, follows an essay for the general reader and student, who wishes the whole study gathered together in readable form. It is the chief portion of the Book for many a reader of the poem and is therefore made the fuller in its scope. On the other hand, the writer has tried to restrict himself to his own limited aspect of the work in hand, barring himself from many an inviting line of thought concerning other phases of the masterpiece.

The question of annotation was one of the most important in the volume, because of the intricacy and extensiveness of the cross-referencing from such a poem to such a book; for any given fact may be repeated a score of times in book and poem. It therefore seemed best to gather all the annotations in a corpus of topical notes and to refer thereto by superior figures. To the casual reader the annotation may at points seem trivial, but the important truth of the study often finds best illustration in a multitude of such petty details. The subdivision of a larger subject among many notes has often been necessitated by the plan of cross-referencing; and the disadvantages therein are overcome by arranging the notes in groups, so that all annotations on the same or kindred subjects will fall together as far as possible. The use of these notes has been facilitated by the line and subject indexes subjoined.

In the course of so protracted a study, I must acknowledge many a helping hand. To my master, Professor Hiram Corson of the Cornell University, I owe not merely my original interest in the poem, but many years of subsequent counsel and support. The officers of Balliol College have never stinted their endeavor to assist me in making my work as complete as

possible. Professors Joseph S. Shefloe, Hans Froelicher, and William H. Hopkins of my own institution, Professor Eustace Shaw of Johns Hopkins University, and Professor Edwin Post of DePauw University have afforded me invaluable counsel in my labor of translation. The officers of the Peabody Library of Baltimore have aided me at every point with the treasures of that institution. I must also acknowledge the personal interest and encouragement of President D. C. Gilman and Professor J. W. Bright.

CHARLES W. HODELL.

The Woman's College of Baltimore,
March 20, 1908.

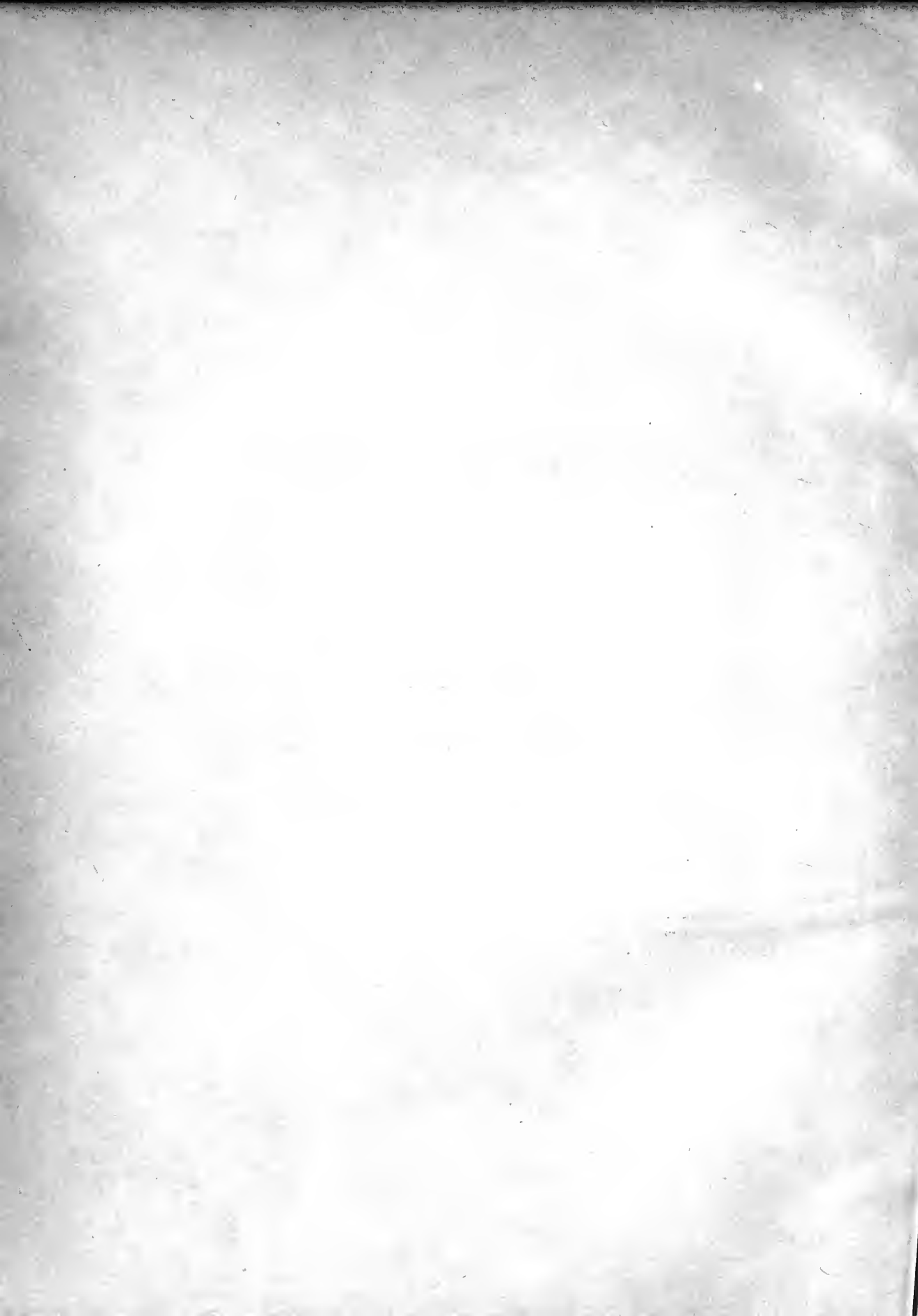
TABLE OF CONTENTS

| | PAGES |
|---|----------|
| The Old Yellow Book | i-cclxii |
| Translation of the Old Yellow Book | I-206 |
| Translation of the Secondary Source | 207-213 |
| Translation of the Casanatense Version of the Franceschini Murder . . | 215-225 |
| The Making of a Great Poem—an Essay on the Relationship of Book and Poem | 227-291 |
| Corpus of Topical Notes | 293-338 |
| Line-index to Notes | 339-342 |
| Subject-index | 343-345 |

DESCRIPTION OF PLATES

- Portrait of Robert Browning, now hanging in Balliol Commons, Oxford.
Painted by R. Barrett Browning in 1883. The Poet holds the Old
Yellow Book in his hand, and is clad in his robes as honorary fellow.⁵³⁶
- Franceschini coat of arms.⁴⁷ A rude water-color sent to the Poet by Barone
Kirkup and pasted on the front inside cover of the Old Yellow Book.
- Portrait of Guido Franceschini. A pen-sketch made on a loose sheet shortly
before the execution of the Murderer. Bought among a bundle of
miscellaneous papers in London, and sent by the finder to the Poet.⁴⁵
- The Death Record of Pompilia in the register of San Lorenzo in Lucina.²⁴

Franceschini
 274
 280



The Old Yellow Book.

Do you see this square old yellow Book, I toss
I' the air, and catch again, and twirl about
By the crumpled vellum covers,—pure crude fact
Secreted from man's life when hearts beat hard,
And brains, high-blooded, ticked two centuries since?

* * *

Small-quarto size, part print part manuscript:
A book in shape but, really, pure crude fact

* * *

Give it me back! The thing's restorative
I' the touch and sight.

* * *

Here is it all i' the book at last, as first
There it was all i' the heads and hearts of Rome

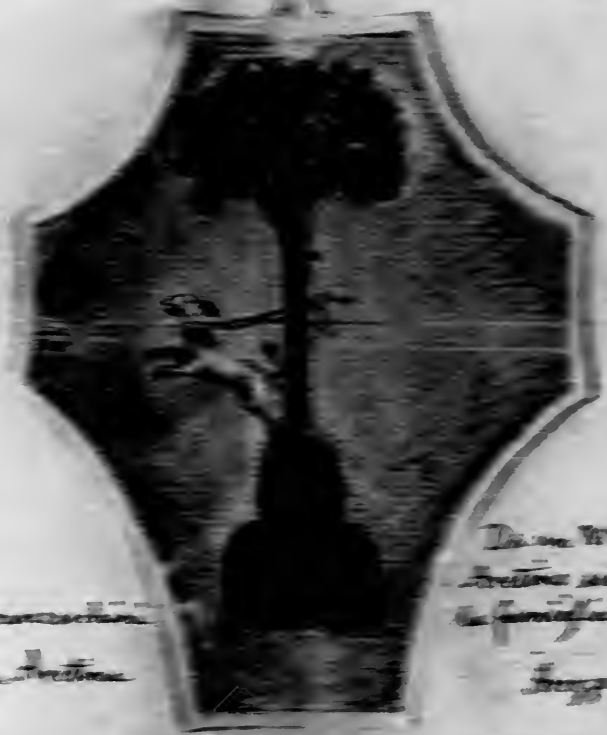
* * *

truth thus grasped and gained,—
The book was shut and done with and laid by

The unique collection of pamphlets, which Browning called the "old yellow book," now rests in Balliol College Library, Oxford. This first reproduction of it has been made by the Columbia Planograph Company of Washington from photographic plates taken by the Clarendon Press, Oxford.

XX

From Journal of the
Fossil



From the
Fossil

From the
Fossil
of the
Fossil

Robert Browning.

ἔμοι μὲν ὦν Μοῖσα καρτερώ-
-τατον βέλως ἄλκᾳ τρέφει.



Posizione
Di tutta La Causa Criminale
Contro
Guido Franceschini Nobile
Aretino, e suoi Sicarij Stati
fatti morire in Roma il di 22.
Febb: 1698.
Il primo con la decollazione et altri
quattro di Forca
Romana Homicidiorum
Disputatur an et quando Maritus
possit occidere Vxorem
Adulteram
absque incurso poene Ord: rj.

Indice

- Sentenza della Quota Criminale di Firenze nella
Causa Criminale Contro Gregorio Sicillichini
Fran: Compilia Comparini moglie di Guido
Franceschini et sequita di. X. 1692 — — —
- Consulto a Difesa di S. Franceschini et S. Giacinto
Arcangeli Procc. de' Poveri in Roma fatto
d'audanti La Cong. ^{no} di Monsig. Governatore —
- Consulto di S. Aust. Deciderio Spreti Aust. de
Poveri a Difesa di Sud. Franceschini, et Socij —
- Consulto del Sud. S. Arcangeli a Difesa di Biagio
Agostinelli et Compagni di Delitto — — —
- Sommario degli atti fatto a parte di Fisco — — —
- Consulto di S. Fran: Gambi di Fisco, e della
Acud. Camera Apostolica Procur. Contro
il Sud. Franceschini, et Socij di Delitto — — —
- Consulto di S. Sid. Batt. Bottini Aust. del
Fisco, e della Reu. C. A. Contro i sudd. — — —
- Sommario degli Atti a parte di Francis-
chini, et Socij di Delitto — — —
- Altro Consulto di Sud. S. Arcangeli a fau-
ro, e Difesa de sudd. — — —
- Altro Consulto di S. Aust. Spreti a favore
de sudd. — — —
- Notizio di fatto, e di ^{ne}rag. fatto, e d'atti
Autore Anonimo — — —

Altro sommario fatto per la parte di Pisco-
Scrittura di S. Pamb. Proco di Pisco contro
i sudd. Franceschini e Socij — — —

Altro Consulto del S. Gio. Batt. Bottini
Aut. di Pisco — — —

Altro Consulto del sudd. Contro D. Rij —

Risposta alle sudd. notizie di fatto d' Au-
toro Anonimo — — —

Sentenza del Sig. Marc' Ant. Venturini Giudice
in Criminale, che dichiara non constare di
Adulterio, e restituisce alla pristina fama
La Memoria della Fran. Compilia Compagnini
moglie di Guido Francesco Ury — — —

Consulto del S. Cont. Lamparelli Proco della
Carità in d. causa — — —

Lettera scritta dal S. D. Giacinto Arcangeli Pro-
curator. de' Poveri a My Fran Cencini in Firenze
nella quale s'annunzia esser stata eseguita la
sentenza di morte in Roma contro i Rej il dì 22.
Febb. 1698. cioè il Francipolini decapitato, e gli altri
quattro rei impiccati — — —

Altro quest'essere, che mandata dal S. Gasparo de
Torre, allora dal S. Carlo Cont. Ugolinucci al pred.
My Fran Cencini — — —

Consulto del S. Aut. Spriti a favor di Francaf-
fina — — —

Adi 15. Febb. 1697. al Jac. ^(no)

Fedej m^o infratto com^o nella filia de' negozi de' K^o m^o
che di propogano ad. A. l. esistente in fan^o di g^o
D. S. A. M^o: Ma R^ota criminale Massima di
Firenze infra gl' altri negozi u^o apparisc^o sotto
n^o 354. il sequente il tenore infratto cioè
Arrearo Contro

1. Gregorio di Fran: Guillicini non descritto
2. Francesca Donijilia Comparini mogli^o di Guido
Francischini, e
3. Francesco di Gio: Borsi. V. Venirino Sarzone d'Agost.
Costo al Canale etc. d. p. a. Inq: contro l'onore defez
de' Matrimoniale ipendosi dato in preda a disonri
ti Amori con il Can: Giusep. Caponsacchi, e con il
m^o Inq. e il c^o u^o mala come si puo' Cridero a jar
fiori da g^o d' Città d' Arrezzo la sera de' 21. Agosto
1697. e sequisse il Coniurato, e non iper^o sc^o si
ne impediti, e Inq. dipe a cena nel vino al di lei
marito il Coniurato, e oggi^o, e alle 7. ore di notte
in c. d' l' isola, e era d. Canonico Caponsacchi, e m^o
Inq. Conducevero via dalla casa d' l' prop. marito
d' p^o a. d. Inq. e x iper^o la porta della fitta d' r^o
rato s'undersero, e murò in l. d. il Torrione,
e pervennero all' Orberia d' Cavallo fuori della Por-
ta S. Clemente dove giun^o d. 3. con il salpe^o a due
Cavalli stana attendendo la loro venuta entrap^o
in d. Calepe d' A. Can. Caponsacchi, e d. p. a. Inq. p^o
l' iniziatosi d' iper^o d. Inq. l' incaminap^o della

uolta di Perugia conducendoli d. 3. in felepo fino
 a Camoscia u mentre per strada uia giuano a uista
 d'ind. 3. Inq. l'uno, et l'altro di facipew & fac-
 ciatom: auento di juu d. p. Inq. con d. f. Inq. con
 d. Card. Caponsacchi fur binand. portato via dal-
 la Casa di d. Guido suo marito d'un Ingiocchia-
 fois serrato a Chiaro de' leuò de' saloni di d. suo
 marito c. 7 200 = mon. tra oro, 3 Inq. Un filo di gle
 Corvitali da tenero al Collo di Valuta 7 200. c.
 Un yaro pendenti con pietre di diamanti di Valuta
 scudi ottantaquattro = Un anello condiamante in
 mezzo di Val. 7 40 = due perle ad vfo di Sorino 7
 pendenti con suoi spille di Val. 7 6 = Un anello d'oro
 con pietra turch. di Val. 7 2 = Un anello d'oro con
 pietra di ruba di Val. 7 36 = Un Vasso d'ambra di Val.
 7 5 = Un Vasso di granati di Val. 7 6. bramizzati con
 fochoncinj d'oro = Un yaro d'orecchia Navicella d'oro
 con perla di Val. 7 16 = due Vassi di diversi pietre ordin.
 di Val. 7 4 = Una Corona di Corriola di s. Sostè con me-
 daglin di Filog. d'arg. di Val. 7 12 = Un Abito di dommo
 con suo mantò e sotta di color gonnè con fiori diversi.
 di Val. 7 40 = Un sottanino turchino fiorito di bianco di
 Val. 7 10 = due Pettine da tenero sotto il mantò di Val.
 7 2 = Un yaro di manicetti di tutto yunto di Val. 7 10 =
 Un altro yaro di manicetti di merletti rigirati di Val.
 7 5 = Un Collare di Val. 7 4 = Una Ciappa di Taffeta
 nero da gualta con fiocco di nastri di Val. 7 10 = Una
 Cuffia ad vfo di Drappino stampato di Val. 7 14 = due

zinali d'Oliuillo con suoi merletti di Val.^a 12 = Un jaro di
 Cabro di seta incarnato di Val.^a 17 = Un jaro di Calab
 di cana, un jaro d'accia bianche, et un jaro d'accia burlesine
 di Val.^a 5 = Un Imbusto di stametto tabaccato con sua
 sottana guarrito di pedina bianca, o incarnata di Val.^a
 7 3 = Un Casaccone di stamè, d'accia burlesino, o bianco
 guarrito di pedina incarnata, et altri colori di Val.^a
 3 10 = Un sottanino di stamè burlesino, o pancino pigato
 et lo lungo di Val.^a 14 = Con suo pigro giallo, e di più co-
 lori d'ajjedi; Un sottanino stampato di Val.^a 9. Una
 Cuffia di lustrino di Valore 3 5 = quattro Camice da
 Donna di ganno lino di Val.^a 3 14 = Un jaro di scaupe
 con fette d'arg.^a di Val.^a 11 = Molti galani, e fettucce di più
 sorte di Val.^a 14 = Sei Foragliolini fini di Val.^a 7 = Un d'broc-
 dia di seta compigliata di Val.^a 7 = Due jara di quanti
 di Val.^a 4 = quattro perauole da naso di Val.^a 5 = Uno sca-
 solino d'argento da tenere il tabacco con l'arme di casa
 Franciscini di Val.^a 16 = Un altro di P. Guido suo mani-
 ro con scafo, e rottura della serratura d'un Capone do-
 ue' esso tiene una parte delle pred. robe, et il tutto conue-
 nire in caso p'roj: Contro la Volontà di med. auando P.
 S. Inq: con d. Can: Caponsacchi assieme con la p.^a Calab
 1.^a mura della Città, siccome sopra con i med. a dubbe-
 rass, e d. B. dato campo alla fuga di P. R. con d. San.
 nel modo sud. Con b. on de

Il Comm.^o d'Avverso fu di parere di condannare arbitrariamente
 il S. Inq: in anni cinque di Confino a Portoferraio finché
 la Calura, e altri, e tanto tempo non osservando con p'fessione
 di giorni 15. a comparire e giustificarsi, la p.^a di condan-
 narlo in pena d'essere a vita, et alla restitua. di
 tutto con d. p'fessione, e il 3.^o non insistendo più oltre
 con il partito liberam.^{te} dalle Carceri. Ma

La Giunta Criminale fu di sentimento di Condannare il detto
alla Galera a beneplacito di S. M. I. col designato rifugio;
quanto alla 2.^a che era rinserata all'ima in un luogo
che si leggeo la spedizione; E il 3.^o che non avendo
fatto mai alcuno volontario Circondò l'Inquisitor
Tornò in d. Nizorio proposto ad S. M. B. con
la firma del di 24. 1769.

Stà bene il parere della Giunta.

Inquorumf

Ego Josephus Vesinius J. V. D. et coadj in Curia
Rogatus Crimij Florentis in fidem

Romana Homicidiorum.

Ill.^{me}, & Reu.^{me} Dñe. **N** Vpserat finistris
Auibus Domi-

nus Guido Francischini nobili genere ortus Francisca Pom-
piliz, quam Petrus, & Violantes Coniuges eorum esse filiam
etiam in eminenti Dignitate constituto asseruerant, & brevi
tempore adducta Aretium Viri Patriam vna cum eius Pseudo
Genitoribus cohibita fuit liberio rem viram ducere, quamuis
prætextu sterilitatis inuisam fuisse commenta sit, vt non obscu-
re depromitur ex eius depositione in Processu fugæ; ægrefe-
rentibus ipsa, & Coniugibus assuetam viuendi Libertatem
sibi denegari, instillarunt Puellæ, vt conquereretur coram
Reuerendissimo Episcopo, quod sibi fuerat propinatum Ven-
enum à Leuro, & in actu discessus Coniugum, qui ad Vr-
bem reuersuri erant, deterrima suasione insuffurarunt, imò
in vim obedientiæ præceperunt, vt proprium Viram occide-
ret, Cognatum, & socrum Veneno perderet, & Domum in-
cendio conflagraret, ac ex indè (post tamen eorum disces-
sum, ne viderentur malum dedisse Consilium) ope Amasij
eligendi mæditatam fugam versus Urbem ad effectum perdu-
ceret, vt ex vna ex eius Epistolis in eodem Processu clarè
elicitur.

Domum reuersi falsi Genitores, declarando Franciscam non
fuisse ab eis genitam, sed conceptam ex incerto Patre per vi-
lissimam Loticem, instituerunt Iudicium coram A.C. Tho-
mato super nullitate constitutionis Dotis.

Decrescente in dies charitate Francisca in eius Virum, & au-
gente se Amore in quemdam Ecclesiasticum, Res eo perdu-
cta est, vt statuta nocte, qui somno Vir opprimebatur, vti-
nam non data opera, & medicinae externo non procurator
fugam è Domo Viri non sine pecuniatum furto, & in socie-
tate eiusdem Amasij Romam petendo aggressa sit; mæstissi-
mo Viro insequente non procul ab Vrbe fuit carcerata, con-
struætoque interim Processu, Amasius pro Adulterio fuit in
Ciuitate Vetula relegatus, & ipsa in Conservatorio deposita,
sed urgente Vtero prægnante ad Domum Petri, & Violantis
regressa partum, vti nam non conceptum Adulterio coitu,
enixa est, quod verecundiam, & dolorem auxit in viro, & ira

A

diu

diu excitata adeo percreuit, vt vndique ammissio honore apud probos viros in ludibrium digito ostenderetur, præcipue in patria, vbi ingenuis hominibus summoperè cordi est bona æxistimatio; Quo circa Ira in furorem, dolor in desperationem ita infælicem virum adegerunt, vt satiùs ducens mori, quam inter honestos ignominiosè viuere, obcæcata mente iter arripuit ad Vrbem quatuor socijs septus, & nocte secunda labentis mensis Ianuarij specie dandi litteram Amasij Relegati properasse prætenditur ad illorum Domum, cuius lanua patefacta ad nomen Relegati, iugulasse Violantem, & Petrum, & confodisse Franciscam tot vulneribus, vt post paucos dies obierit.

Eadem desperatione durante improuidus, & hæbes animus modum se in tutum ponendi non suggestit, sed iisdem Homini- bus stipatus per viam consylarem recto tramite ad patriam reuersurus in stragulo quiescens in quadam Cauona ab insequentibus Birruarijs cum socijs carceratus remansit.

Magnum quidem facinus, sed maximopere commiserandum, & excusatione dignissimum, cui sæuerissimæ leges indulgent, & mitissimè se gerunt erga Maritos notam Infamix delentes sanguine adulterarum Vxorum *l. Si Adulterium cum incastru* 38 *S. Imperatores ff. ad leg. Iul. de Adulter. l. Marito* 24. *ff. cod. leg. Gracchus C. cod. leg. 1. §. Fin. ff. ad leg. Cornel. de Syccar. l. Si quis in graui* 3. *S. Si tamèn Maritus ff. ad Syllan. clar. §. Homicidium. num. 49. Giurb. cons. 86. num. 9. Berlich. pract. conclus. §. 4. conclus. 27. num. 152. Caball. resol. crim. cas. 300. num. 5. Farinac. quest. 121. num. 63.*

Quod idem sancitum fuerat in legibus Athæniensium, & solonis, hoc est sapientissimorum Legislato rum, & quod magis est in illo rudi sæculo Romuli *leg. 15. ibi -- Adultery conuictam vir, & Cognati vri volent necant -- vt refert ibi Balduin. Piccardin §. Item lex Iulia de Adulterijs num. 3. Instit. de public. Iudic., & similiter in legibus 12. Tabul., vt refert Aul. Gell. noct. Act. lib. 10. cap. 23. Tiraquell. ad leg. Connub. 15. num. 13. Couar. in Epitom. Decretal. lib. 4. part. 2. cap. 7. §. 7. in princ. & num. 1., Amescua de potest. in se ipsum cap. 13. num. 12. in fin., Matthæu. de re crim. contron. 11. num. 8.*

Et præmissio non posse dubitari de Adulterio Vxoris, nedùm ex fuga simultanea cum Amasio per longum tramitem continuata, *Rimin. Iun. cons. 274. num. 31. Menocch. cons. 31. numero*

mero 22. *Farinacc. quest. 136. num. 184. Crus. de Indic. part. 2. cap. 7. num. 27.*

Ex litteris Amatorijs mutuò missis, quæ sine nausea in Processu fugæ legi non possunt *Hostien. in cap. Præterea num. 5. vers. de Adminiculis, & ibi lo: Andr. num. 4. Ancharan. num. 3. de Testibut, Paris conf. 54, num. 64. lib. 4. Rinin. lun. dicto conf. 274. numero 9. Farinacc. dicta quest. 136. num. 126. Crus. de Indic. dicta part. 2. cap. 7. num. 7.*

Ex Ingressu eiusdem Amasij Clandestino in Domum eiusdem tempore suspecto *in Process. fuga 107 & seq. Grat. conf. 50. ante numerum primum, & num. 4. lib. 2. Crot. conf. 413. num. 35. vers. Idem deponit, lo: Bapt. Ferret. conf. 168, num p. & seqq & num. 4. Bursatt. conf. 69. num. 9. Rot. diuers. decis. 95. num. 7. part. 2.*

Ex osculis in eadem fnga impietis *fol. 100. iuxta illud.*

Visus, & alloquium, tactus, post oscula factum.

& probant *Abb. in cap. Tertio loco num. 4. vers. vel ipsam osculantem extra de presump. Hostien. in dicto cap. Præterea num. 5. vers. De Adminiculis etiam extra de Testib. & ibi lo: Andr. num. 4. Ancharan. num. 3. Ant. de Butr. num. 9. ad fin. vers. Adminicula autem.*

Ex condormitione in eadem Cauponæ cella 49. *Paris. conf. 160 num. 60. lib. 4. vers. & ulterius optime Ioseph. Fontanella consil. crim. diuers. 97 num. 29. lib. 2. in paruis, Soccin. lun. conf. 32. numero 16. lib. 2. lo: Baptista Ferret. dicto conf. 168. num. 1. in fin. & num. 11. Menocch. de Presump. Presumpt. 41. num. 11.*

Sed etiam ex Sententia Iudicis, qui condemnauit Amasium pro cognitione Carnali ipsius, quæ nototim inducit *Cap. vestra de cohabiti Cleric. & Mulier cap. fin. tit. eod. & in terminis viu. decis. 297. num. 12. & 13. lib. 1.*

Ultra quod hic non agitur de probatione Adulterii ad irrogandam Pœnam, sed ad effectum excusandi Occisorem, & ad illius defensionem, quo casu leuiore probationes exhuberarent vt monet *Mathau. de r3 Crimin. d. Controu. 11. num. 25.*

Quibus præhabitis non obstat aliquorum opinio afferentium non esse excusabilem Maritum à Pœna ordinaria occidentem Vxorem Adulteram ex interuallo, ex quo prædicta Iura loquuntur de Vxore reperta in flagitio, & sic incontinenti proinde non debent extendi ad Vxoridum ex interuallo patratum, ex quo non debeant relaxari hæbentibus ad delinquendum, & ad sibi Ius dicendum *Farinacc. quest. 121.*

num. 118. Dominus Rainal. in suis obser. Crim. cap. 2. §. 4. nu.
156. & cap. 7. in Rubr. num. 117

Nam p̄tatei quamquod *Farinaccius* non firmat Conclusionem
sed nimis dubium se præbet ibi. -- *Res apud me est valde dubia* --
nam promittigatione Pæna Causa honoris, & iustus dolor, qui
semper Cor premit, multum stringit -- quæ verba in nostro pro-
posito benè ponderat *Matth. en. de re Crimin. Controu. 12. sub*
num. 22. & insuper concludunt tam *Farinaccius*, quàm *Domi-*
nus Raimaldus Pænam posse moderatè consulto Principe.

Aduerri humilliter supplico. quod prædicta Inra, quæ videntur
require Reperitionem in fraganti, ve aliqui opinati sunt, id
non statuunt ad excusandum Maritum motum ad occidendum
ex rep̄tino Iræ impetu, & inconsulto illius calore, sed ne qua-
libet suspitione Adulterii plerùmque vana ad occidendum,
irruant Vxores sæpè innocentes. proinde depræhensio in Cri-
mine à legibus requisita non refertur, nec intelligitur de repe-
ritione in actu Turpitudinis. sed refertur ad probationem
Adulterii, ne leuibus suspitionibus Vxor, tradatur vltimo sup-
plicio, vbi tamen non est dubitabile Adulterium, ad euitan-
dam maximam Pænam nullum discrimen reperitur inter occi-
dentem incontinenti & ex interuallo, vt in puncto *Donde ex*
gra. viden. Consult. 97. num. 17.

Quoties enim Vxor sit de Adulterio conuicta, vel sit Adultera ma-
nifesta, semper dicitur in Crimine depræhensa *Glos. in cap. ex*
litterarum 4. de eo qui dux. in Matrim. qua poll. per Adult. in verb.
depræhensam ibi - Ide it conuictam sola enim depræhensio non suffi-
ceret ad hoc, vt separaretur, licet sufficiat ad infamiam - Glos.
in l. 1. sub verbo depræhensus C. vbi Senat. vel Clarif. Bartol.
in l. 1. num. 1. C. de Petit. Ban. sublat. lib. 10. 10. de Plat. in Ru-
bric. C. eod. num. 1. Caball. Resol. Crim d. Casf. 300. num. 26.
Bertazzol. Consil. Crim. 42. num. 10. Mattheu. de Re Crim. d.
Centrou. 12. num. 5. optime Sanfelix. decis 337. nu. 91. & seqq. E
de Vxore conuicta loquitur d. lex Romuli.

Et in rei veritate rationes adductæ per sectantes contrariam opi-
nionem sunt nimis debiles. Homicidium enim ex causa Ho-
noris commissum quotiescunque committatur, semper dicitur
incontinenti commissum, quia honoris læsio semper ante ocu-
los sedet, & assiduis, ac incessantibus stimulis præmendo, ad
sui reparationem sollicitat, & impellit *Ginrb. conf 86. num.*

18.

18. & 19. *Balthaf. de Angel. in Addit. ad Gizzarel. decis. 18. num. 5. Prat. Respons. Crim. 25. num. 5. in fin. Sanfelix. d. decis. 337. num. 50.*

Relaxatio Habænarum Maritis ad sibi ius dicendum esset solummodo considerabilis, si adhuc vigeret lex Repudii, hoc enim casu non esset permittendum Maritis ius sibi dicere pro reparatione sui honoris, nam alia Via satis sibi consultum esset facultate scilicet dimittendi, & repudiandi Vxorem pollutam & sic causam Turpitudinis, imò ipsam ignominiam procul a se abire possent; At postquam Divina fauente gratia gentilis Cæcitas eliminata est, & agnitum fuit Matrimonium esse perpetuum, & indissolubile, sunt miseratione dignissimi, qui preclusa sibi omni alia via, honori suo litando Cruore Adulterarum Vxorum maculas detergunt *Petr. Erocl. Rer. Iudicat. lib. 8. tit. 1. de Adulter. cap. 1. ubi postquam de huiusmodi re disseruit iuxta normam iuris Romanorum in fine addit ibi Spe enim sublata secundi Matrimonii, quamdiù Adultera superstes erit, durius existimamus iustissimum dolorem nisi tanto tempore extinguui, itaque qui Diuortio non terminatur terminatur Homici diosfi (inquit Augustinus) quod non licet, ut liceat, hoc est uti aliter aducatur, altera occidatur.*

Fateor esse laudabile refrenare Maritorū Audaciam, ne in propria Causa ius sibi dicant; quia possunt decipi, sed laudabilius profecto esset cohibere salacitatem Vxoribus; si enim modestè se gererent, & honestè viverent, non utique Viros impellerent ad huiusmodi fere dixerim necessaria facinora, neque negare possumus ex ignominia Adulterio illata non exasperari, Vesanos reddi, & iustissimum dolorem in corde excitari, qui omnem alium sine comparatione præcellit, maiorem proinde commiserationem meretur iuxta illud Satyrici.

Exigit iste Dolor plus quam lex ulla Dolori concessit.

Quod bene agnovit Papinianus in l. si Adulterium cum incastru S. Imperatores ff. ad l. l. de adulter. ibi - Cum sit difficillimum iustum dolorem temperare l. Gracchus Cod. eod. Ex quibus Doctores inferunt iustum dolorem lenire pœnam etiam in præmeditatis facinoribus, quia iustus dolor non facite refedit, nec tractu temporis vires ammittit, sed sicut Infamia assiduo cor pungit, & quo durat Infamia ipse durat, imò augetur

Afflict. super Constit. Regn. Neap. lib. 3. de pena Vxorū in adulterio Rub. 46. num. 1. in fin. & num. 2. Facchin. conf. 36. num. 11. lib. 2. Caball. resol. crim. d. Cas. 300. num. 66.

Eò intensius impellit, quo magis impune, vt ita dicam, Vxo- res matrimonia fœdant, & totius Domus honorem coinquinant; Antiquo tempore, vigente lege Iulia Vxo- res maritalē Thalamum fœdantes vltimum supplicium subibant *l. quam- nis la. 2. C. ad leg. Jul. de adulter. l. transgtere C. de transact. S. item lex Iulia de adulterys Instit. de public. iudic.* Prout sā- citum fuerat in Sacris Litteris, Vxo- res enim adulteræ lapi- dibus obruebantur *Genes. cap. 38. Leuit. cap. 20. vers. 10. Deu- teronomi: cap. 23. vers. 22. Execchiel. cap. 16.*

Solacium ex publica vindicta sumptum sedabat dolorem, infamiam delebat, & primæuz libertati Coniux restitutus, noua sed honesta inducta Vxore, in decore filios suscipiebat; At modo, mala nostra tempestate; ob deplorabilem sceleris fre- quentiam vbiq; locorum obsoleto Sacrarum Legum rigore, cū agatur micissimè contra Vxo- res turpitèr viuentes, infā- licissima esset Maritorum conditio, si aut viuendum esset per- petuū cum infamia, aut illius abolitio, morte Vxorū mediā- re, expianda esset vltimo supplicio, vt bene considerat *Mat- thau. de re Crim. d. controu. 12. num. 27.*

Quocircā vbi queritur, vt Maritus totaliter impunis euadat, tūc requiritur, quod Vxor occidatur in actu turpitudinis reperta ac vbi quæstio sit, an Maritus Vxorica causa honoris impul- sus mitius puniatur, nihil interest, an incontinenti, vel ex in- teruallo coniugem occidat, *Matthau. de Re Crim. d. controu. 12. num. 16.*

Nec talis Sententia caret fundamento in ipso Iure Ciuili Ro- manorum, *Martianus enim in l. Diuus Adrianus ff. ad l. Pom- pe. de Parricid.* asserit Patrem, qui Filium in venatione neca- uerat ex quo nouercam polluerat adulterio, fuisse depor- ratum, nec tamen illum reperiat in ipso flagitio, sed in venatione, hoc est interuenientibus a quibus amicitia, dissi- mulata iniuria proindè fuit punitus, sed extra ordinem, quia non Iure Patris, sed potiùs more Latronis filium interfecit, vndè desumere possumus non fuisse punibilem occisionem, sed occisionis modum, quemadmodum deducimus ex *Bartol. ibi, & Cuiac. in ff. tit. 40. num. 5. in Addit. litt. E. optimè De- cian. tractat. Crimin. lib. 9. cap. 8. num. 11. Bertazzol. consilio*

356, nu.

356. num. 18. *Farinac. conf.* 66. num. 5. *Dondæu. consult.* 97. num. 5.

Præterea est consideratione dignissimum, quod pro tutela sui corporis impune licet Aduersarium occidere, sed incontinēti, & in ipso actu aggressionis, non autem ex interuallo, quia per occisionem Occisoris non reparatur vita illius, qui ab ipso occisus est, proinde quidquid post primum homicidium sequitur, tendit ad vindictam legibus exosam, & odiosam, quia quoquo modo læditur Iurisdictio Iudici, auferendo facultatem publice vindicandi homicidium, sed si per mortem homicidæ posset in vitam reuocari occisus ab eo, non puto esse dubitabile, quin liceret cuilibet dictum interfectorem interficere, quia non esset ultio, sed mera defensio tendens ad recuperationem Vitæ ademptæ; At ubi sumus inoffensione, & iniuria non tangere Personam Iniuriati, sicuti permissum est furtum passo occidere furem pro recuperandis bonis ablatis, etiam ex interuallo, quoties præclusa sic omnis alia via illa recuperandi *Farinac. quæst.* 125. num. 216. Ità pariformiter omni tempore permitti debet offenso in sua existimatione occidere Iniuriantem, nam non dicitur vlcisci iniuriam, sed resarcire honorem suum labefactum, qui nullo alio modo reparari potest, vt ratiocinatur *Dondæu. d. consult.* 97. num. 15. & 16. & idem sentit *Sanfelic. d. decis.* 337. num. 47. ad 49. & seq. & num. 87.

Ultra quod, vt dixi, quando agitur de defensione vitæ, agitur de actu instantaneo, ideoque Ira ex ea concepta debet aliquando residere, iuxta monitum *D. Pauli ad Ephes. 4.* ibi *Sol non occidat super iracundiam vestram* - Sed quando sumus in offensione honorem lædente, hæc non est momentanea, sed habet tractum successiuum, imò lapsu temporis eo maior euadit, quo plus vilipenditur iniuriatus, ideo quotiescumque sequatur homicidium, semper dicitur immediatè commissum, *Sanfelic. d. decis.* 337. num. 50. *ultra alios citatos.*

Proinde his, & aliis rationibus fracti communiore assentientium Calculo Doctores firmarunt, Maritum occidentem Vxorem Adulteram ex interuallo, & non repperam iu actibus venereis puniri quidem, sed mitius, & extra ordinem, *Bart. in l. Diuus ff. ad l. Pomp. de Parricid. Bald. conf.* 312. num. 5. lib. 4. *Alex. conf.* 140. num. 9. lib. 2. *Afflic. in Constit. Regni Si Marius num.* 1. Rub. 46. lib. 3. *Tusch. præf. conclus. litt. A. conclus.*

143. num. 31. *Ruin. conf. 2. num. 7. lib. 3. Honded. conf. 104. num. 30. vol. 1. Bersaz. zol. conf. Crim. 42. per tot. 10. Franc. de Popi. 98. num. 8. & seq. lib. 1. Marta. vot. Pif. 206. per totum Girrb. conf. 86. num. 19. & 21. Vin. decis. 241. num. 26. & 27. Grammat. decis. 13. num. 6. Gizzarell. decis. 18. num. 4. & 5. Sanfelix. dec. 264. n. 5. & d. dec. 337. per totum Matthæu de reCrim. d. controu. 12. nu. 21. & per tot. Thor. Compend. decis. Verb. occidens V nozem ante med. vers. alias si ex intervallo part 3. sect. 2.*

Et idem practicum fuisse in diversis Orbis Tribunalibus testantur *Caball. disto cas: 300. num. 45. & alios casus recentet similiter decisos Calvin. de aquitate lib. 1. cap. 58. num. 18. 30. & 31. Cyriac. qui loquitur in grauioribus terminis controu. 105. in fin. Matthæu plures etiam casus decisos refert dista controu. 12. in fin. & alios quamplurimos adducunt Doctores mox citati.*

Quæ benignior sententia facilius amplectenda est, ut aucthomo, quia factum, de quo agitur, etiam, iuxta sensum fisci non fert secum circumstantias præferentes tam rigorosam penam. Non quidem assumptio lociorum adhibitorum in homicidijs, quia licitè potuit uti opera comitum, ut tutius potuisset morte vxoris suo honori consulere *Castre n. conf. 277. lib. 2. Soccin. Jun. conf. 34. num. 12. lib. 2. Paris. conf. 154. num. 7. & 8. vers. Quinimo, & num. 16. lib. 4. Capoll. conf. crim. 4. sub. num. 13. & per innumeros Caball. d. cas: 300. num. 59.*

Neque delictum in alio rem speciè euehitur ex quo socios conduxit pacta mercede, quia licitè potest maritus, quod magis est, & sine comparatione admirabilius alijs demandare homicidium vxoris adulteræ mediante pæcunia, ut inconcusse firmarunt *Bald. in l. Gracchus num. 5. C. ad l. Inl. de Adulter. Afflict. in consit. Regni lib. 1. Rubr. 8. de cultu Pacis num. 8: Mazzol. conf. 57. num. 18. Carer. Pract. crim. §. circa. itaque num. 5. sub vers. ad instar hostis vers. tamen Baldus fol. mibi 192. & §. excusatur num. 13. vers. in tanta fol. mibi 196. Alex. Rauden. var. resolut. cap. 7. num. 5. vers. & mediante assassinio, Paschal. de Patr. Potest. lib. 1. cap. 5. num. 23. vers. qui dicit hanc vindictam, Vin. decis. 197. num. 25. lib. 1. Mart. vot. Pifau. 206. num. 9. Gramm. super consit. Regn. s. maritus n. 12. lib. 3. Capoll. conf. crim. 73. n. 11. vers. sed hoc respondendum, Calvin. de aquitate lib. 1. cap. 58. num. 30.*

Si-

militèr nil turbat, quod Dominus Guido in ipso actu fugæ
 potuerit vxorem, & Adulterum occidere repertos in caupo-
 na Castru noui, sed potius voluerit eos carcerari querens pu-
 niri iure medio, & non de facto. Quoniam negamus. potuisse
 tuto vtrumq; interficere, quia erat solus, nec poterat sine vitæ
 discrimine eos aggredi, quia Amasius est viribus pollens, nun-
 quam timidus, & nimis ad resistendum promptus, dum ex
 dicto vnus testis in Processu fugæ vocatur - *Scapezza collo* -
 nec est credibile, nisi fuisset animosus, & interritus aggressum
 esse tam grande facinus, ausum fuisse participem esse fugæ,
 & sociare claribus viri profugam vxorem; Et apertius desum-
 mitur ab vna ex eius epistolis, in qua hortando Franciscam,
 vt in Lagenis somniferum medicamen admisceret ad oppri-
 mendum somno virum, & domesticos, subiungit, quod qua-
 tenus præsensissent, aperiret quidem Ianuam, nam, vel mor-
 tem cum ipsa subiturus esset, vel ab eorum manibus eam
 eripuisset, quæ indicant audaciam, & fortitudinem: Et licet
 vxor esset femina, hoc est imbellis, & timida, nihilominus
 Francisca nimis Procax, & audax siue ob odium erga mari-
 tum, siue ob iram conceptam ex carceratione Amasij Gla-
 dium strinxit contra virum coram Birruarjs eam carceraturis,
 & ne vterius progredetur, necesse fuit, vt ab eius manibus
 ab adstante euelleretur, vnde non potuit ante carcerationem
 illorum quod meditatus fuerat, & sibi licebat, ad effectum
 perducere, quia erat solus, & viribus impar; Deinde ad carce-
 res adducta, & postmodum in conseruatorio deposita, impos-
 sibile ei fuit suum honorem vindicare, sed è Monasterio ex-
 gressa, & ad domum Petri, & Violantis redacta, primum, quo
 potuit vltus est, proinde habetur ac si in fraganti, & incon-
 tinenti eam interfecisset, *Sanfelic. dicta decis. 337. num. 58. in
 fin. 59. & 60. vbi quamuis maritus potuisset eam incontinenti
 occidere, & non interfecit, sed dissimulando quam citius po-
 tuit ab ignominia nece vxoris se exemit, & num. 90. circa fi-
 nem, Giarb. d. cons. 86. num. 19. & 21. vbi quia non agitur de
 iniuria personali, sed reali, vt supra dictum est.*

Curauit eius capturam, & interit, vt puniretur, ne adulteria,
 & Flagitia continuaret, & impotens ad aliud peragendum,
 quod confusio mentis, rabies inualida, & verecundia suasit
 inconsultò peregir, non vt sibi ius adimeret proprijs manibus
 recuperare honorem ammissum; Querelauit quidem, sed quia

oc-

occidere non potuit, nec ex illius carceratione, & punitione fuisset deterfa ignominia, & abolita infamia, imò cum post illius carcerationem magis arceretur à cætu nobilium, semper acerbior reddebatur iniuria, & feruentius stimulabat ad reparandam suam existimationem, præcipuè augebatur animi mæror præsentiendo fuisse regressam in Domum Petri, & Violantis, qui declarauerant non esse eorum filiam, sed inhonestæ mulieris, vnde augebatur iniuria permanendo in domo suspecta, vt paulo infra dicitur, & proinde eadem causa militat tã post egressum, e Monasterio, quam ante carcerationem, & instantias factas per Dominum Guidonem.

Parum etiam refert, quod Francisca permaneret in domo Violantis de consensu fratris dicti Domini Guidonis assignata pro tuto carcere; Nam quicquid sit an de consensu ipsius Domini Guidonis eduçta esset à Monasterio, de quo nullum verbum habemus in Processu, potuit id dissimulare, vt aditum habere potuisset ad eam occidendam, vt honor, eius reintegraretur, nec huiusmodi dissimulatio delictum auxisset, præcipuè ad pœnam ordinariam, cum certum ut absque illius incurfu posse vxorem adulterio pollutam necari, quamuis modo maior modo minor pœna ingeratur, quo maior, vel minor proditio intercesserit, vt in Senatu Matritensi præteari testatur *Matthæus. de re crim. d. controu. 12. num. 29. & 30.*

Nec mæretur considerari circumstantia loci dati pro Carcere, quasi quod læsa fuerit Principis Custodia, quia, præterquam quod non dicitur esse in Custodia, qui detinetur in aliquo loco cum fideiussione de non egrediendo *Angel. in l. qui in Carcerem ff. de eo quod met. caus. Capyc. decis. 154. num. 4. Farinacc. quest. 30. num. 38. & est text. non obscurus in l. succurritur in fin. ff. ex quib. Caus. maior. ibi - Custodiam autem solum publicam accipi Labeo putat - & ibi gloss. in verb. Putat.*

Obiectum fundjtus corrui, quia circumstantia huiusmodi loci crimen non exasperat, quotiès committatur à Prouocato, & ad propulsationem Iniuriæ, vt in fortioribus terminis de delicto commisso intra Carceres *Mar. Mus. decis. 36. Ricc. decis. 245. part. 3. Merlin. Pignattell. controu. Forens. cap. 66. num. 28. & 29. Censur. prima.*

Demum ob Homicidia Petri, & Violantis ex supra deductis augeri Pœnam non posse credimus, quia eadem causa Honoris, que

quæ impulit Dominum Guidonem, coegit etiã perdere dictos coniuges. Parcant interim Defunctorum Cineres, si ea, quæ supra reruli, & quæ dicturus sum, videantur turbare eorum Pacem, quia non Odij fomes, nec Iræ impulsus, quorum causas procùl habeo, suggererunt, sed Defensionis necessitas non vno titulo assumptæ compellit omne, quod ad finem exoptatum conducit, in medium proferre.

Dixi, & vt puto, non immeritò Dominum Inquisitum profilyse ad vtriusque Internicionem motum simpliciter iniuriã de directò lædente suam æxistimationem; Post enim paucos menses à die Matrimonij contracti cum Francisca, quam esse eorum Filiam professi fuerant, non erubuerunt declarare non esse talem; Hinc est inuitabile Dilemma; Aut verè, & realiter fuerat ab ipsis genita, & cogenur fateri, negando postmodum Filiationem, impressisse maximam Iniuriam Honori, & æxistimationi Domini Inquisiti, & elicitur magnum odium, & Liuor in eis contra eundem, quem, vt Ignominia afficerent, veluti desponsasset Filiam vilissimæ, & inhonestæ Mulieris, non curarunt de honestate propriam Filiam; Hoc vnum est, quicumque agnoscit Dominum Guidonem, apprehendet Matrimonio se copulasse cum Puella ne dum disparis, sed etiã infimæ, & inhonestæ conditionis, quod summoperè lædit æxistimationem totius domus.

Aut in veritate Francisca procreata fuit ab incerto Patre, & in lucem ædita per inhonestam Lotricem, & non poterit negari non fuisse maiori iniuria affectum inurente notam infamix, tum respectu Natalium, tum quia solent Filix non diffimiles esse Matribus *Cephal.conf.140.num.30. Farinacc.conf.24.num.15. & quaest.136 num.99. Boss.in Pract.tit.de Plur. violent. nu.68.in fin.* Et est text.in cap.sⁱ gens Anglorum 56.dist. ibi de tali commixtione maretricum, æstimandum est, degeneres Populos, & Ignobiles, & furenes libidine - Et vtinam experientia nos non docuisset!

Credidit Infelix vir nubere Filix Petri, & Violantis ex legitimo Matrimonio natæ, & nihilominus opera, & fallacia dictorum coniugum nupsit Puellæ deploratæ conditionis, conceptæ ex inhonesta Matre fornicario coitu; Hinc delumi fas est, cuius qualitatis essent coniuges prædicti, qui, vt fraudarent legitimè vocatos ad Fideicommissum partum vilissimum, suppo-

supposuerunt , immemores Reos factos esse ultimi supplicij
L. prima, C. ad leg. Cornel. de fals. Marflan. l. si mulierem num. 3. ff. ad leg. Cornel. de Sycar. lo. de Anan. in cap. Ad falsarium num. 11. in fin. de Crim. fals. Boss. in Pract. tit. de Partu supposito num. 1. Boer. decis. 82. num. 8. in fin. Afflict. decis. 404. num. 17. in fin. vers. Item in eo Peguer. decis. 80. num. 8.

Non erit igitur difficile creditu quæ Francisca in Epistola supposuit suo Leuiro , quod prædicti coniuges , & si ipsa bene tractaretur instabant quotidie , vt virum , Cognatum , & suorum veneno perderet , & incendio Domum consumeret , quæ licet pessima sint , adhuc peius consilium , etiam in vim obedientiæ dederunt , vt scilicet post eorum discessum ab Aretio capteret Amasium , ipsoque Comite à Domo viri diuertendo , se conferret ad Urbem , prout veluti obedientissima Filia nimis quippè prompta paruit mandatis . Quis igitur negabit , non esse tribuendum huiusmodi Ausum temerarium , ex quo notorium factum fuit obprobrium diffusum toti Domui Domini Inquiriti , per suasionibus impijs dictorum Coniugem ? Nec fuit difficile persuadere Puellæ ea , ad quæ propensa erat instinctu originario , & exemplo Matris .

Ad quid autem tam anxie desiderarent Coniuges regressum Francisca ad eorum Domum , non est meum diuinare , non tamen possum mihi persuadere , quod mouerentur ex mera Charitate , vt scilicet se eripeter à malis tractamentis , dum fatetur Francisca in dicta Epistola ducere vitam tranquillam , virum , & Domesticos cum ea optime agere , & ea , quæ Reuerendissimo Episcopo supposuit fuisse falsò commentata dictis coniugibus . Scio insupèr , quod si vir notum habens Adulterium Vxoris , eamque Domi retineat , notam , & Poenam Lenocinij evitare non potest *L. 2. §. Lenocinij, l. Mariti Lenocinium ff. ad leg. Iul. de Adulter. l. 2. Cod. eod. Manoch. de Arbitrar. cas. 534. num. 23. Farinacc. quest. 144. num. 94. & 98.* Si ergo , vt dicti coniuges exaggerabant , Francisca non erat eorum Filia , cur eam post detectum manifestè Adulterium in domum tenerissimè receperunt , & , vt ita dicam , in sinu confouerunt nedum vsque ad æditionem Partus , sed etiam vsque ad mortem ? Et vtinam ibi non perdurassent Amores cum Relegato ! dùm ad simplex nomen illius , percepto à pulsante Ianuam , quod redditurus erat Epistolam dicti Relegati ,
 statim

statim patefacta fuit Ianua, factus fuit aditus Marito ad recuperandum Honorem, nam si dicti Coniuges male sensissent Adulterium Franciscæ, horruissent quidem sine dubio nomen Adulteri, & omnem astruxissent viam mutuæ correspondentiæ; Ex quibus evidentissimè patet, continuasse causam Honoris læsi in Domino Inquisito, imò novas causas emerfisse eiusdem speciei, quia omnes tendebant ad deturpandam eius æxistimationem.

Nec quicquam facie, quod plures Causas odij recenseat Dominus Inquisitus tam contra Franciscam, quàm contra Coniuges, quia si bene perpendantur, omnes coincidunt, & rediguntur ad originalem Causam, nempè Honoris læsi, Vtcumque sit, quandò Causæ sunt inter se compatibles, adhuc vrgentiori, & pinguiori actus sequutus tribuendus esset *Rot. cor. san. mem. Alex. VIII. dec. 168. num. 5.* & in puncto, quod concurrentibus pluribus causis, Homicidium referatur, & tribuatur causæ Honoris, & non alijs *Matthæi. de re crim. d. controu. 11. num. 38. & 39.*

Quam obrem puto, quemlibet Cordatum Hominem debere fateri iustissimam causam habuisse occidendi prædictos Coniuges, & iustissimum dolorem fuisse excitatum, atque in dies auctum humana consideratione, quod non nupsisset illi, nisi deceptus fuisset à Vaferrimis Coniugibus; Et prædictis additur, quod aut Partus æditus fuerat conceptus ex Adultero, vt D. Inquisitus credere poterat, nesciens in fuga Vxorem esse prægnantem, & non possumus negare, ex partu prædicto non fuisse nouam causam excitatam, siue Priorem renouatam; Aut genitus fuerat à legitimo Patre, & quis negabit, ab illius occultatione irasci denuò non debuisse ammissione Filij? Ex vtraque causa maximus dolor conceptus, cui est vis maxima, excusationem mæretur, adeò ut quamplurima Delicta atrocita iusti doloris impulsu perpetrata à quauis pœna impunita remanserint, vt notant *Alex. ab Alex. in Summ. 4. par. q. 86. membr. 3. art. 1.*, *Tiraquell. de Pœn. temperan. Caus. 1. num. 16. in fin.* Quod etiam innuit *text. in d. l. Graschus C. ad l. Inb. de Adulter. ibi - Tamèn quia nox, & dolor iustus factum eius releuant. po. iest in exilium dari - Harprecht. in §. Item lex Cornel. de Sycar. n. 212. Instit. de Publ. Iudic. Abbas in cap. olim num. 6. de Rescript. Angel. in l. si Adulterium §. Imperatores nu. 2. ff. ad leg. Iul. de Adulter. ; Rimin. Iun. conf. 136. sub nu. 6. inter conf. Crim diuers. tom. primo.*
Ber-

Bertazzol.conf.243.num.7.& conf.286.num.6.& conf.505.nu.30., Giurh.conf.86 nu 8.Vers. Et ubi iusto dolore Prat. Respons.25.num.41.Conciol.Alleg.87.num.4.

Et non semel in contingencia facti euaserunt Impunes qui iusto dolore moti apposuerunt manus etiam in Innocentes; Mulier enim quædam Smirnea Virum, & Filium ex eo conceptum interfecerat ex quo Vir perdidit filium suum primi matrimonij, accusata deinde apud Dolabellam Proconsulem, neque duabus cædibus contaminatam liberare, neque iusto dolore impulsam condemnare voluit, sed remisit ad Areopagum Sapientissimorum Iudicum Cætum, ubi, cognito de Causa, responsum fuit, ut ipsa, & Accusator post centum Annos redirent, & sic duplici Parricidio Rea, quàmuis etiam Innocentem occidisset, vndeque evasit Impunis, ut refert *Valer. Max.Distor.factor.memorab.lib.8. cap.1. de Public. Iudic. vers. Eadem hesitatione, Tiraquell.de Pæn.temperand.Caus.1.nu.17. circa med. Menocch.de Arbitrar.caf.356.num.60. Cyriac.contr.105.num.39.Gramm.dec.5.num.23.*

Similiter Vxor, quæ mandauerat Homicidium Viri ob iustum dolorem ex denegatione debiti matrimonialis fuit Pæcuniarum multa punita, & ad temporalem permanentiam in Monasterio, ut testatur *Cyriac.d. Controu.105. in fin.*

Hæc sane procederent, quoties Dominus Inquisitus esset de prædictis confessus, vel legitime conuictus, quorum neutrum affirmari potest, multò igitur magis admittenda sunt, dum fatetur dedisse dumtaxat ordinem ad incidendam faciem Vxoris, vel ad strigandum; & si Mandatarij mandatum excessissent, non utique de excessu teneretur *Decian.tract.crim. lib.9.cap.36 nu.6.vers. Et Ego unum defendi, Clar.S. fin. quest.89. num.5. Menoch.de Arbitrar. caf.352. num.3. Farinacc. qu.135. num.156.*

Socij, & Comites illum nominant, & profitentur cædibus interuenisse; sed præterquamquod Fiscus præterdit in quam plurimis veritatem occultasse, non patitur Æquitas, ut eorum Depositione scindantur, & pro parte tantum accipiantur, cum mendax in vno, talis censeatur in omnibus; Exhuberaret ad adimendam eis omnem Fidem, quod in Tortura coram ipso maculam non purgauerint *Scacc.de Iudic.lib.prima cap.86.num.56. Farinacc. q.43. num.34.& seqq. Cartar. Pract.*

In-

Interrog. Reor. lib. 4. cap. 1. num. 14. , Honded. cens. 100. num. 2, & 16. lib. 1. Caball. Resol. crim. Cas. 85. num. 11.

Licuit ad defensionem iustius Nobilis Viri currenti. ut aiunt, Calamitas hæc deducere præ temporis angustia, quæ non passa est alia fundamenta cumulare, quæ paruo labore, & forsan non inutilitèr coaceruari poterant, quàmuis credam exuberantèr satisfactum esse obiectionibus, quæ pro parte Fiscus excitari possent.

Quare &c.

H. de Arcangelis Pauperum Procur.

Illustris. & Reuerendis. Domino
GVBERNATORE
In Criminalibus

Romana Homicidiorum.

P R O

**Domino Guidone Francischino
Carcerato.**

C O N T R A

Fiscum .

Memoriale Facti, & Iuris .

Romæ , Typis Reu. Cam. Apost. 1698.

Romana Homicidiorum.

Illustris. ^{me}, & Reu. ^{me} Dñe. **E**X Pro-

cessu fabricato in hoc eodem Tribunali, & ab ipsomet D. meo Venturino Iudice presentis Cause satis, superque constat de Adulterio commisso per Franciscam Pompiliam Vxorem D. Guidonis Francischini Nobilis Aretini cum Canonico Caponsacchio, cum quo conspirantibus eiusdem Franciscæ Pompiliz Genitoribus, quamvis hic in vrbe degentibus, tradito prius somnifero eidem Domino Guidoni, totique eius Familix noctis tempore eadem aufugit è Ciuitate Aretij Vrbem versus, ita, vt memoratus Canonicus fuerit hac de causa Relegatus in Ciuitate Vetula cum expressione facta in Decreto dictæ Condemnationis Cognitionis Carnalis eiusdem mulieris; Constat etiam de dicto Adulterio ex aliis in facto deducendis per Dominum meum Procuratorem Pauperum, ita, vt nullus remaneat hæsitandi locus super hoc, quin potius prædictum Adulterium dici possit notorium hic in Vrbe, in Patria dicti D. Guidonis, & in vniuersa Hetruria.

Hoc stante iurè asserere possumus, quod quamvis idem D. Guido esset confessus de nece Inflicta dictæ suæ Vxori, cum complicitate, & Auxilio Blasij Augustinelli de Ciuitate Plebis, *Pamini* Dominici Gambasini de Florentia, Francisci Pasquini de Castro montis Acuti, & Alexandri Baldeschi Tiphernatis; non propterea veniret puniendus Poena ordinaria, sed mitiori, ex Rescripto Diui Pij relato ab Vlpiano I. C. in l. si Adulterium 38. S. Imperatores ff. ad leg. Cornel. de Adulter. & à Martiano pariter I. C. in l. prima S. fin. ff. ad l. Iul. de Sicar. Vtrobique enim dicitur, quod humili loco natus in exilium perpetuum datur, nobilis verò ad tempus relegatur; Ignoscitur siquidem Marito tunc iustum Dolorem exequenti, vt suppetit idem Vulpian. in l. si quis in graui. S. si quis moriens in fine ff. ad Sen. Consult. Syllan. Difficillimum cum sit illum temperare, vt habetur in dicta l. si adulterium cum Incesta 38. S. Imperatores, ff. ad leg. Iul. de Adulter.

Et ita conciliando Antonomiam leg. nec in ea 22. ff. eodem Tit. benè declarat ibidem gloss. in verbo omnem, & in dicta l. prima

A

S. fin.

S. fin. v. Rescripsit, vers. sed videtur, ff. ad leg. Cornel. de Sicar. & in dicta l. si quis in grani. S. si quis moriens, verbo Ignoscitur ff. ad S. C. Sillansan. & tenuerunt Doctores communissimè, signantèr Alberic. Rayner. & ceteri scribentes in l. Gracchus, Cod. ad leg. Iul. de Adulter. Angel. in dicta l. si Adulterium cum Incestu. §. Imperatores, num. primo, & 2. ff. eodem, Paris. conf. 154. num. primo, & 2. lib. 4. Giurb. consil. 86. num. 9. Soccin. lan. conf. 34. num. 5. & seqq. lib. 2. Bertazzol. consil. Crimin. 42. nu. primo, Tiraq. leg. Connub. 12. sub num. 3. Angel. de Malef. in verbo Che hai adulterato la mia Donna, vers. aduertat tamen, pagina mibi 118. à tergo, Neuizan Silu. Nuptial. lib. p. verbo non est nubendum, num. 93. & seqq. Gomez. ad leg. Tauri 80. numer. 51. vers. vnum tamen est, Decian. tract. Crimin. lib. 9. cap. 15. nu. 38. Menoch. de Arbitr. cas. 356. numer. 89. Foller. pract. Crim. verb. dentur Capitula, quod suffocauit uxorem, num. 63. fol. 280. Farinacc. quest. 121. num. 59. & 60. latissimè Caball. Resol. Crimin. cas. 300. num. 5. & pluribus seqq. Mattheu de re Crimin. controu. 11 num. 8. Dondè Consult. 97. num. 1. & 2. Sanfelic. decis. 337. num. 9. dextart. plures alios allegans decisione Sardin. 57. per tot.

Quamquàm ad hoc, vt mitigationi dictæ Pœnæ locus esset, necesse quidem non haberemus, quod Adulterium vxoris fuisset, prout est, concludentèr probatum; sufficeret enim, quod versaremur in simplici suspitione *gloss. in l. Divus Adrianus in figuratone Casus, ibi-* qui filium occidit, quem cum Nouerca iacere credebat, & erat fortè verum, deportatur in Insulam *ff. ad leg. Pompeiam de Parricid. Innoc. in cap. si verò sub num. 1. vers. nec laicus dubitaret, & vers. vel ipse laicus de hoc probabiliter dubitaret de sens. excomm. Arcin. consil. 85. num. 55. Grammatic. conf. 18. num. 5. & conf. 29. num. 2. Farinacc. conf. 35. num. 22. idem Grammatic. decis. 5. num. 10.* Vbi de eo, qui se iactauerat velle carnaliter cognoscere sororem occidentis, quod iustam suspitionem, & Timorem amissionis honoris dicitur inculsisse ad cuitandam Pœnam ordinariam homicidii, optimè *Dondè. dicta consul. 97. num. 5.*

Nec verum est, id, quod aliqui Doctores affirmant, quod necessarium sit, quod Maritus vxorem depræhendat in Adulterio, illamque incontinenti occidat, in quibus Terminis inquirunt loqui supradictas leges, secùs autèm si ex Intervallo, vt per Doctores allegatos *per Farinacc. qui illos sequi videtur dicta quest.*

quast. 121. à num. 111. usque ad 118. & conf. 141. per tot. vol. 2.
 Contraria enim opinio est verior, communior, & in praxi tenenda, vt benè consuluit *Marsil. conf. 105. num. 31. & seqq.* vbi pro defensione cuiusdam Nobilis, qui ex Interuallo occiderat alium, qui se desponsauerat per verba de futuro cum eius sorore, illamque tenuerat per tres menses, & deindè refutauerat, propter quod magna fuerat irrogata Iniuria, & Ignominia eius familiæ, & toti Cognationi, adducit supradictas leges loquentes de Marito occidente Vxorem suam Adulteram, *Beriaz. zol. dicto conf. 42. num. 8. & seqq. usque in finem,* vbi ponit Casum in eo, qui vxorem Adulteram interfecerat, & postea ad sui defensionem probauerat Adulterium ex gemi, nata eiusdem Vxoris Confessione, & *Claudius filius in Addit.* testatur dictus Occisorem fuisse à Prætorè Mirandulæ Bannitum ad tempus, & postea lapsis aliquibus mensibus à Domino Duce Mirandulæ reuocatum, *Io. Franc. de Ponte conf. 98. nu. 27. & seqq. Vol. 1. repetit. subius deo. Sanfel. 337. sub nu. 87. & seqq. Afflict. super Const. Reg. d. lib. 3. Rubr. 46 sub n. 1. vbi relata Constitutione Regni - Si Maritus - concedente impunitatem Marito occidenti Vxorem, & adulteram dummodò ambos in ipso actu adulterij, & sine vlla mora occidat, inquit, quod si non cõcurrant huiusmodi requisita, Maritus excusatur à tãto, non autem à toto, & sic mitius punitur, & num. 2. rationem reddit, quia vbicunq; quis iusto dolore motus commisit delictum, pœna debet aliquantulum tẽperari, iuxta prædictum Textum in l. si quis in graui §. si quis moriens, vers. maritus ff. ad Sen. Conf. Syllanian. & àlios, quos ibidem allegat, sequitur Carer. præf. Crim. §. 9. excusatur maritus nu. 10. fol. 170. Caball. d. res. 300. num. 24. & duob. seqq. vbi: ac num. 26. testatur ita vidisse obseruari in facti contingentia, Cabrer. de metu lib. 2. cap. 45. num. 13. vers. que quidem sententia Bellon. de potest. eor. que fiunt in continenti cap. 20. num. 6. vbi quod ita statutum fuit per Senatum Mediolani *Matth. de re Crim. controu. 12. à num. 7. usque ad 17. & num. 21. vbi quod ita obseruant eunq; ferè tribunalia Mundi, & numeris seqq. usque in finem, & de Regimin. Reg. Valent. cap. 8. §. 8. num. 65. vbi quod ita fuit iudicatum per Regium Senatum, & num. seqq. usque ad 70. vbi sub num. 69. adducit pulcra verba Theodorici apud Cassiodor. lib. 1. variar. epistol. 37. ibi - Quis enim ferat hominem ad leges trahere, qui matrimony nisus**

est Iura violare? Feris insisum est copulam suam extrema concertatione defendere, dum omnibus est animantibus inimicum, quod naturali lege damnatur; Vidimus Tiuros faminas suas cornuali concertatione defendere, Arietes pro suis ovibus capitaliter insaure equos adiunctas sibi faminas Colapbis, ac morsibus vindicare, ita pro copulatis sibi animas ponunt, qui verecundia non moventur. Homo autem quemadmodum patiatur adulterium inultum relinquere, quod ad eternum suum dedecus cognoscitur commississe? & ideo si oblata petitionis minimè veritate fraudaris, & genialis Thori maculam deprahensi adulterij sanguine diluisti, nec sub pretextu Cruenta mentis, sed causa pudoris intendis ab exilio, quod tibi constat inflicium, te precipimus alienum, quoniam pro amore pudicitia porrigere ferrum maritis non est leges calcare, sed condere - Nonar. in Summ. Bullar. par. 1. Comment. 72. sub num. 81. vers. ex quo adnlterio, Baldaxar de Angelis in addit. ad Gizzarel. decis. 18. num. 5. Carol. Anton. de Luc. in addit. ad Defranch. decis. 678. num. 8. ad fin. vers. maritus, vel pater Donde. d. consult. 97. à num. 10. usque in finem ubi in vers. & hac meâ interpretatio, inquit, quod ista interpretatio manifestè probatur autoritate à Gloss. in cap. ex littererum 4. de eo, qui dnx. in matrim. quam polluti per adulterium, cum enim in Textu dicantur illa verba vxorem tuam in adulterio deprahensam. Glos. in V deprahensam, explicat, idest conuictam, Mart. vot. seu decis. 206. per totam ubi num. 4. quod ista opinio est multum iusta, æqua, & communiter tenet, Morra dec. Sicilia 61. num. 11. & 12. & in Calce ponit resolut. Magnæ Curiz d. Regni, per quam maritus fuit damnatus ad terremes per septennium, idque attenda circumstantia, quod vocari fecerat Vxorem per filium, extra mœnia Ciuitatis. ibiq; illam interfecerat, & eius Cadauer postea repertum fuerat, comedi à canibus Dexar. decis. Sardin. 5. per totam, ubi in fine testatu r sic fuisse decisum in Sacro Regio Prætorio, condemnando maritum dumtaxat in exilium, Sanfalic. decis. 337. num. 12. & 13. ubi quod imò concurrente Qualitate Personæ tuerunt à Regio Consilio Neapolis absolui quidam nobiles iuvenes, qui occiderunt vxores ex intervallo, & ex vehementi suspicione Adulterij, ad quorum favorem scripserunt doctores primæ classis, quorum allegationes idem Author ponit subtus dictam suam decisionem, & quamuis aliqui ipsorum fuerint damnati ad remigandum, inquit, quod

hoc

noc processit ex causa abscissionis genitalium de facto fecu-
ta, quia nempe id facientes reputantur inimici naturæ, latissi-
mè *Panimoll. decis. 86. n. 20. & pluribus seqq. Caldero decis. 42. n.*
16. & 17. vbi quamuis ipse in antecedentibus. n. n. in nobis con-
trariam inclinarent opinionem, viso Matthæi supra per nos al-
legato cum illius opinione pertransit.

Et ratio est euentissima, quia huiusmodi iniuria recepta per
viros ingenuos, præsertim nobiles, eisdem semper est præ-
sens, semperque cor premit, & vrget ad vlticendum ob
amissum honorem recuperandū, vt benè animaduercit *Giurb.*
d. conf. 86. num. 19. Bellon. de potest. eorum, qua sunt inconstin. de-
cto cap. 20. num. 6. Carol. Ant. de Luca in addit. ad Franch. dicta
decis. 678. num. 8. ad finem, vers. maritus, vel Pater, Sanfelic. d.
decis. 337. seu melius in prima allegat. subius dictam decis. num.
50. Panimoll. d. dec. 86. num. 21. & seqq.

Quemadmodum semper, & vbiicumque agitur de homicidio
commisso ex causa honoris non esse locum pœnæ ordinariæ,
sed eam arbitrio Iudicis mitigandam, etiam, quod illud se-
quutum fuerit ex interuallo, & post multum tempus ex supra-
dicta ratione firmant, & decissum referunt *Grammatic. decis. 5.*
& 23. Gizzarell. decis. 18. num. 4. vbi quod ita semper fuit iudic-
atum per Sacrum Consilium Neapolitanum, & quod hæc
opinio semper fuit à maioribus nostris recepta & num. 5. ibi-
que Baldax. de Angel. num. 1. & seqq. Prat. respons. crim. 25. num.
15. in fin. Adden. ad Pascal. de virib. Patr. potest. par. 3. cap. 6.
§. congruit pag. 343. Vermigl. conf. 37. num. 11. Rot. Genueu. voc.
12. sub num. 5. vers. & est adèò prinilegiata, post Censal. ad leg.
vn. Codic. si quis Imperat. maledix. Campan. resolut. 16. nu. 5. vbi
quod ita fuit iudicatum per Magnam Curiam Vicariæquam-
nis ageretur de homicidio post biennium, & proditoriè com-
misso à duobus fratribus in personam Adulteræ eorum Soro-
ris Consobrinæ, Cyriac. consonef. 104. num. 73. vbi de homici-
dio commisso per vxorem in personam mariti ex causa, quod
retinebat Concubinam, & eius Honori insidiabatur, & dicit,
quod iustus dolor cum habeat tractum successiuum ratione
vtimi doloris, vltio semperdici debet sequuta incontinèti,
Polie. de Reg. Andien. tom. 2. tit. 10. cap. 7. nu. 30.

Suppetit quoque alia ratio à Doctoribus considerata, quia sci-
licet iniuria, per quam honor læditur, non est Personalis, sed
realis, quæ propterea propulsari potest quâdocumque etiam

post lapsum longissimi temporis, ut in nostris terminis *Giurb. d.conf.86.num.20. & 21. Io. Francisc. de Pont. dicto conf.98.num.29 & seq.lib.1.repetit.subtus d.decis Sanfelice. 337. sub num.87. vers.nam cum fiat, & n.seq. Cabrer.de met. d.lib.2.cap.45.vers. pungit pro hac sententia, Maria d.vot, seu decis.206.num.10. Panimoll.d.decis.86.num.27, & seq.*

Cum igitur habeamus tot Classicos doctores viuissimis rationibus firmantes homicidium commissum etiam ex interuallo in Personam vxoris, & alterius cuiuscumque Personæ ex causa honoris non esse puniendum poena ordinaria, sed mitiori, & ulterius dicti Doctores testentur sic fuisse iudicatum in Tribunalibus, in quibus ipsi versati fuerunt; nil profectò curandum est de contraria opinione *Farinacc.d. quest.121. & d.conf.141.* quia euidenter dignoscimus ipsum loqui contra communem, & in Tribunalibus magis receptam opinionem *Valenzuel.conf.139.num.25. & 26. Rot.recent.decis.464.num.8. part.5.tom.2.*

Uterius animaduertendo, quod *idem Author in conf.66. num.5.* contrarium tenet, præsertim se fundans in dispositione *Textus in leg. Diuus Adrianus ff.ad leg.Pomp. de Parricid* vbi Pater occidens filium non reperiunt in actu venereo cum nouerca, sed in venatione, & in Siluis, & sic interuallo non mortis, sed de portatione spœna punitur, cuius *Textus* dispositionem pariter pro Corroboracione huius nostræ opinionis adducunt plerique ex præcitatis Doctores, considerando etiam quod *idem Author in dicta quest.121.* dubius hæsit, ut in *num.118.* vbi fatetur, quod pro hac nostra opinione multum stringit suprâ relata ratio, quod causa honoris, & iustus dolor semper cor premit, ideoque ait in contingentia facti seruari debere dispositionem *Textus in leg. non puto ff. de Iure Fisci* vbi Modestinus Iuris Consultus inquit se non putare delinquere eum, qui in dubijs quæstionibus contra Fiscum Facile responderit, & *Farin.* sic dicentem refert, & sequitur in his terminis *D. Raynal. partie 2. cap.2. S.4. num.156.*

Cauendum autem est ab eo, quod asserit *idem Farinacc.d. conf.141. in fine,* quod scilicet sua opinio fuisset, ut ipse percipere poruit magis approbata à Sacra Consulta, quia cum, ut ipsemet fatetur, dubitatio tunc non fuerit proposita, ipse non poterat diuinare quid euenturum fuisset si proposita fuisset, & reuera sapientissimi PP. dicti supremi consensu cum illius

opi-

opinionem non transeunt, sed contrariam nobis fauorabilem seruant, vt ex resolutionibus, quæ emanant in dies; ita enim seruatum fuit die vigesima quinta Martij 1672. cum Carolo Falerno qui damnatus fuit in extraordinariâ pro homicidio patrato in personam Francisci Dominici; quem inuenit egredientem ex Ecclesia, ad quam ne accederet præmonuerat suspicatus, quod Vxorem ad seceraretur, simili modo cum Carolo Matarazzo sub die 15. Augusti 1673. qui vxorem interfecit ex ea rusticana suspicione, quod Partus suppurata ratione mensium suæ absentix esset suspectus de non legitimitate, cum tamen ea suspicio in facto non aded veritati responderet, & in iure sit res prorsus fallax, & humano intellectui imperuia ad *text. in l. 1. §. 14. ff. de agnosc. & alend. lib. & ibi scribentes*, & optimè ratiocinatur Rot. in *Auenionen. dotationis 3. Martij 1692. § sed cum hodiè coram R.P.D. meo Caprara.*

Sicuti etiam in homicidio ex insidijs, cum Archibusiata commisso in personam Thomæ Bouini a Francisco Mattuccio de monte S. Ioannis persona vilissima ex Causa simpliciter tentatæ pudicitix eius sororis, de quo constabat per duos Testes de auditu ab ipso occiso die 4. Septembris 1692. pænam trimerium perpetuarum, in quam sub die 12. Iulij antecedentis dictus Mattucciùs ex indicijs vrgentissimis condemnatus fuerat moderata est Sac. Consulta Ponente bo. mem. R. P. D. Ratta.

Iure itaque meritò *idem Farinacc.* ex professo confutatur, & reijcitur à *Matth. de Re Crimin. d. resol. 12. num. 22. & à Dexarr. d. dec. 5. præsertim num. 16.*

Et hæc nostra opinio eò facilius recipienda venit, ponderando, quod maritus indignatur plùs de adulterio Vxoris, quàm si filius occidatur plenè *Io: Lopez in Rubr. de donat. inter virum, & Vxor. §. 78. num. 3. cum seq. Boss. de Cois. damn. & punibil. num. 46. Cabal. resol. crimin. cas. 15. num. 9. & dist. cas. 300. num. 10. Nouar. in Summ. Bullar. dista par. 1 commentar. 72. sub num. 81. Mut. d. dec. 61. num. 1. quinimò, & magis, quàm si strupetur filia, *Nevizan. Silu. uuptial. li. 1. verb. non est nubendam num. 30. Paschal. de vir. patr. potest. par. 1. cap. 5. num. 34. vers. & de hoc Crimine, Nouar. d. commentar. 72. sub d. num. 81. adeò, quod si maritus de adulterio Vxoris non conqueratur, præsumitur Leno, vt prosequitur *Pascal. ubi***

proximè; Adulterium siquidem Vxoris offendit non solum maritum, sed totam cognationem denigrat, & maculat, ut inquit *Roman. cons. 451. num. 10. Boss. d. tit. de coit. damn. & punibil. n. 44. Nouar. d. Commentar 72. sub d. n. 81.* quod contigisse in presenti casu manibus palpatum est; Dominus enim Abbas Paulus frater D. Guidonis coactus fuit non solum urbem deserere, in qua summa cum laude vixerat per multos annos, sed transgredi Italiam, quia nimirum per huiusmodi adulterium summum Dedecus consequutus fuerat, adeo, ut cum Iudicialiter prosequeretur illius Causam ipsi accidit, quod mouerit risum, & cachinnos serè in omnibus etiam sensatis, & cordatis viris; non tamen dicam in ipsismet Iudiciibus, quemadmodum in his etiam contingere conuenit *Teste Castr. cons. 277. sub numero 3. vers. sed nec Iudices lib. 2. sequitur Neuizan. Silu. nuptial. lib. 1. verb. non est nubendum sub num. 94. Cabal. dict. cas. 300. num. 17. Matth. dicta contr. 12 num. 25. Boer. dec. 298. num. 1. Calderò d. dec. 42. num. 6.*

Prædictis nullatenus obstaret, si, citrà veri præiudicium, admitteremus (proùt Fiscus prætendit) quod idem D. Guido Vxorem occidisset cum Complicitate, & auxilio prædictorum Blasij, Dominici, Francisci, & Alexandri adhuc effectum coadonatorum, quia id ei facere licuisset, ut commodius, & tutius de illa vindictam sumeret *Bald. in cap. ultim. num. 6. circa finem, de Iuram. Calumnie, Castrens. in leg. Resectionis num. 4. Cod. Comm. Prædior. Ias. in leg. 1. §. V usufructarius, num. 5. vers. secundò notabiliter limita ff. de oper. nou. nunciat. Castrens. cons. 277. num. 3. lib. 2. Cepoll. cons. Crimin. 4. num. 13. vers. secundò similiter, & num. 14., & 15. vbi refert id fuisse Iudicatum per totam Curiam Veronæ, & num. 16. & seq. vbi quod ista est veritas, & cons. 73. num. 11., & de seruit. Urban. prædior cap. 23. num. 11., vbi paritèr, quod ita fuit iudicatum, & quod hoc est menti tenendum, *Rolan. cons. 34. num. 8. & sequentibus, usque ad 18. lib. 2. Soccin. iun. cons. 34. num. 12. & seq. vol. 2. Paris. cons. 154. num. 7. vol. 4. Io: Franc. de Pont. cons. 98. num. 31., & seqq. lib. 1. quod est repetitum in Calce dicta decisionis Sanfelici. 337. num. 89., & seq. Marsil. singular. 175. per tot. Io: de Arnon. singular. 85. pariter per tot. Cassan. ad Consuet. Bur g. Rub. 5. S. 1. tit. des rentes n. 43. pag. mihi 815. Neuizan. Sylu. nuptial. lib. 1. Ver. non est nubendū n. 98. Gomez ad leg. Tauri 80. num. 62. Caball. resol. criminal. d. cas. 300. num. 58. cum seq. & num. 75. Mars. vot. seu decis. 206. num. 9. Garz de-**

Et

Et quidem etiam quod prædictos homines conduxisset mediante pecunia, Bald. in leg. Gracchus sub num. 5. Afflict. super constit. Regni lib. 1. rubric. 8. num. 30. & lib. 3. rubric. 46. num. 3. & 4. & utrobique testatur se ita praticari vidisse, Carer. practie. criminal. in 3. tract. de homicid., & assassin. §. 8. excusatur Pater num. 13. fol. 169., & §. 9 excusatur Maritus num. 11. fol. 170. à sergo Mart. dicto vos. seu decis. 206. eod. num. 9. cum alijs allegatis infra §. Et in fortioribus.

Non autem Causa honoris cessat respectu homicidiorum dictorum Soceri, & socrus, Nante enim conspiratione habita in Adulterio per filiam commisso, ipsi fuerunt in Causa iniuriæ, & ignominie, quæ ex eo resultarunt in perniciem honoris, & existimationis Domini Guidonis Generi, & respectiue Mariti, propterea sicuti ipsi de lure puniri debuissent eadem pena qua Principalis iuxta Textus expressos in leg. Qui domum, ubi Gloss. & in leg. Et si Amicis, cum leg. Sequenti ff. ad leg. Iul. de Adulter. & in leg. 1. §. Fin. ff. de extraordinar. Crimin. Nat. conf. 151. per tot. vol. 1., Pascal. de vir. Patr. potest. part. 2. cap. 10. numero 20. Ita, & sufficientem Causam dederunt eidem Domino Guidoni de illis vlciscendi.

Addito insuper, quod, ut in facto probabitur, & asseruit in suis Constitutis ipsemet D. Guido, ipsi aliud præiudicium intulerunt existimationi eiusdem mediante lite Civili per ipsos intentata suppositionis partus dictæ Franciscæ Pompiliæ, euulgando etiam, & distribuendo non solum hic in Vrbe, sed etiam in Patria ipsius mordacissimas scripturas confectas, quin etiam impressas super eadem lite, ita, ut negari non possit, quin Dominus Guido ex hoc etiam iustum dolorem, & Prouocationem conceperit, & iustam Causam habuerit sumendi vindictam ad Textum in cap. 1. de ijs, qui fil. occid. ubi Alexander Tertius rescripsit Episcopo Tornacensi, quod mulierem, quæ filium interfecerat eo, quod sibi à Marito exprobaretur illum esse conceptum ex Adulterio, detruderet in Monasterium. In delictis enim, in quibus etiam Iracundia non excusat, adhuc delinquens in iracundia, quæ ortum habuit ex iusto dolore venit a liqualiter excusandus, ut ex prædicto Textu notat ibidem Gonzal. num. 2. & firmat Menoch. de Arbitr. cas. 356. num. 59.

Absque eo, quod ex his Fiscus prætereendere possit incursum pœne in Alexandrina constitutione appositæ, quia delictum in præ-

præfenti non potest dici commissum in odium litis, in qua D. Guido sententiam fauorabilem ab A. C. Thomafo reportauerat, canonizatam etiam a supremo Tribunali signaturæ iustitiæ, sed potius ex iusto dolore proueniente ex dicta Ignominia eidem resultante ex dicta Partus suppositione, atque ex prouocatione ab eisdemmet occisis facta mediante dicta euulgatione, & distributione scripturarum, & conspiratione prædicta ad fugam eius Vxoris; cum scilicet dicta constitutio non intret, vbi dolus non interuenit, sed ex Parte offensi aliqua præcessit prouocatio, vt latissimè firmat *Farinacc. conf. 67. per tot.* vbi in calce ponit per extensum decisionem Sacræ Rotæ.

Et in omnem casum, cum in D. Guidone duæ concurrerent Causæ ad delinquendum; Altera scilicet prædictæ litis, & Altera honoris læsi ob dictam litem intentatam, & conspiratam fugam, ex quo adulterium processit, attendenda est illa honoris, quæ est grauior, & consequenter etiã magis proportionata delicto *Honded. conf. 105. num. 60. lib. 1. vermigl. conf. 79. n. 15. Rot. Genuen. vot. 11. n. 5. & 6. post Censal. ad l. unic. C. si quis Imper. maledixer.* optimè in his terminis *Matth. de re crimin. contr. 11. num. 79.*

Similiter nec aggrauari debet pœna respectu loci, quia honoris defensio est adeo iusta, adeoque est iusta Ira, animique motus ex ea proueniens, vt de eo non sit habenda ratio, vt ex *Ioanne Francisc. del Carrillo decis. 271. nu. 51 & 55.* loquente de Insultu facto in Carcere tenet *Merlin. Pignatel. controuer. for. cap. 66. num. 27. & 28.* vbi num. 29. Conclusionem comprobatur ex eo, quod maior Reuerentia Ecclesiis, & alijs locis, Deo consecratis, & in quibus Rex Regum, & dominus dominantium assistit per essentiam, & nihilominus delinquens in eis ex iusta Ira, & dolore excusatur, asserens ita vno ore fateri Canonistas omnes in *cap. fin. de Immunit. Eccles.* & alios per eum ibi allegatos.

Facilius igitur Conclusio procedere debet in Casu nostro, vbi D. Francisca non existerat in Carceribus formalibus, sed habebat domum pro Carcere sub fideiussione scutorum Tricentorum de non discedendo, qui enim dedit fideiussores, & Iurauit de non recedendo nec in vinculis, nec in Custodia est *L. prima ff. de Custod. Reor. Angel. in l. qui in Carcerem num. 2. ff. quod*

quod met. *Caus. Luc. de Pen. in l. si quis Decurio, num. 6. Cod. de Decurion. lib. 10.* Vbi quod sine diuersa inter se in vinculis custodiri, & fideiussoribus committi *Grammat. conf. 51. num. 8. & 9. Farinacc. quest. 30. numer. 58.* vbi quod verbum Custodiæ magis strictè intelligendum est, quàm verbum vinculorum, per *Textum in l. Succurritur in fine, ibi -- Custodiam autem. solum publicam accipi Labeo putat -- Et ibi -- gloss. in verbo putat. ff. ex quibus Caus. maiores &c. Cyrill. in Summ. Crimin. Rubr. 12. de Custod. Reor. §. 1. num. 1. vers. Vinculorum ergò appellatio latius accipitur.*

Si igitur D. Guido, quatenus etiàm confessus fuisset se cum complicitate, & Auxilio prædictorum occidisse propriam Vxorem, socerum, & socrum ex prædictis haud puniendus esset poena ordinaria, multò facilius id assequi debemus attempto, quod ipse solummodò factus fuit dedisse mandatum, vt Doctorem vtar verbis, ad sfrilandam dictam suam Vxorem tantum, non enim hoc casu ipse tenetur de morte secuta dictæ suæ Vxoris, & aliorum *Dec. conf. 622. num. 4.* vbi quod mandans in isto casu, solum puniri potest per modum culpæ, pro qua nec pæna corporalis imponi potest, *Grammatic conf. 20. num. 1. & 2. vermigl. conf. 16. per eos: signanter num. 20. Petr. a plaz. epitom. delictor. lib. 1. cap. 15. num. 1. vers. idem.* etiam dicendum si fieret mandatum ad sfrilandum, *Menoch. de Arbitr. cas. 352. num. 3. & 4. Farinac. quest. 135. num. 156.* Quatenus verò silens huiusmodi confessioni qualificatæ acquiescere nolit, sed dum inquisitum torquere prætendat probanda vltiori prætensa veritate, in tali casu Tortura erit simplex, non enim agi potest de tormento vigilæ, quia obstat constitutio sa. m. Pauli V. edita super reformatione Tribunalium vrbis; quæ habetur inter alias constitutiones eiusdem in ordine la 71. *Tit. de Iudic. Criminalib. qui est §. 10. n. 30. tom. 3. Bullar. pag. 198.* per quam sancitum fuit huiusmodi tormentum inferri non posse, nisi copulatiuè concurrant illa duo, videlicet quod delictum sit atrocissimum, quodq; Reus sit grauatus iudicijs vrgentissimis, & testantur *Spad. conf. 114. n. 4. lib. 1. Farinacc. qu. 38. num. 71. Locatel. qq. Iudic. crimin. inspect. 1. uum. 44. Guazzin. def. 30. cap. 21. num. 13. vers. & hic, Eusebius laudatissimæ memoriæ decessor meus in sua alleg. impressa apud Passerin. in cap. 1. sub n. 70. in principio, de homicid. in 6.*

Deli-

Delictum autem atrocissimum dicitur dumtaxat illud, pro quo pœna grauior, quàm simplicis mortis imponenda venit, veluti scissionis in frusta, combustionis, & similibus, *Farinac. qu. 18. num. 68. Carpzon. pract. crimin. par. 3. qu. 102. num. 62. Sca-morol. de visit. Carcer. lib. 2. §. 6. cap. 4. num. 14. pag. 291. Cam-pau. resol. 2. num. 28. Polic. de Reg. audien. tom. 1. tit. 3. cap. 2. num. 62. D. Rainald. obseru. par. 3. cap. 84. §. 6. num. 4* Quod mortis Genus, vti Ignominiosum, & Irrogans Infamiam signanter non habet locum in Personis nobilibus, *leg. moris est 9. §. sed enim ff. de Pen. Gloss. in l. desertorem 3. §. torquen-tur, ibique Bartol. ff. de Re milit. Idem Bartol. in l. capitalium §. serui casi ff. de Pau. Cassan. in Catal. Glor. mundi par. 8. con-sider. 33. vers. hinc etiam est. Farin. quest. 98. num. 98. Conarr. variar. lib. 2. cap. 9. num. 4.* multò igitur minùs, quod non agitur hic de Pœna mortis, quæ in præsentì non intrat ex su-periùs firmatis, & in puncto ad effectum, vt huiusmodi deli-ctum non dicatur qualificatum aduertit *Gabriel. cons. 187. num. 12. & 13. lib. 2.*

Quæ dicta sunt favore D. Guidonis Principalis militant etiam favore, prædictorum Blasii, Dominici, Francisci, & Alexan-dri, quia nec ipsi puniri possunt pœna ordinaria, sed ea dum-taxat, qua dictus Principalis *Bald. in l. Græcus, num. 5. Cod. ad leg. Iul. de Adulter.* vbi ponit Casum de statuto præcipiente, quod Bannitus pro certo Crimine non possit occidi nisi ab Inimico, qui fecit eum banniri, & dicit quod si Inimicus fe-cerit eum assassinari, Assassinus non punitur, & Rationem reddit, quia quod fuit licitum in Persona mandantis, repu-ratur licitum in Persona mandatarii, & dicit esse Casum expres-sum in d. lege, *Castrens. in l. Refectionis n. 4. Cod. Commun. Pra-dior.*, vbi quod si ex forma statuto licitum est alicui sumere vindictam de eo, qui ipsum offendit, licitum est etiam con-gregare Amicos, qui ipsum iuuent ad hoc, & quod illi non puniuntur, sicut nec ipse Principalis, & dicit hoc idem tenuisse *Iacob. Butrigar. & in l. raptores num. 6. vers. Sed quid si permittit C. de Episc. & Cleric.* vbi in eisdem terminis, & *cons. 277. sub nu. 3. vers. Ideò parcendum fuit eis*, vbi in terminis mar-riti, qui coadunauerat homines ad bastonandum eum, qui cùm vellet offendere pudicitiam suæ Vxorìs iniunxit ei-dem Vxorì, vt fingeret se præbere aures, & cùm venisset, fuit
com.

commissum homicidium, & dicit, quod Hominibus talitèr
 coadunatis parcendum fuit, quia huiusmodi coadunatio fue-
 rat licita Marito Principali *Vol. 2. lason. in leg. 1. S. usufructua-*
rius num. 5. præsertim in secunda limitat. ff. d. non. oper. nonciat.
 vbi quod quavis vindicta, quæ à statuto permittitur, non pos-
 sit alteri demandari, tamen is, cui illa permittitur, potest
 secùm adhibere Socios, & Complices ad istum actum, qui si
 simul cùm eo occidant, non tenebuntur de occiso, nec de Au-
 xilio præstiro, & dicit, quod ista sua opinio est multum Cor-
 di tenenda *Capoll. conf. Crimin. 4. num. 13. vers. 2. similiter, &*
num. seqq. & exemplificat in pluribus casibus signantèr in il-
 lo de hominibus occidentibus conuersantem cum Sorore,
 eius, qui illos coadunauerat, & dicit, quod non debuerant
 puniri, sicuti, nec ipse principalis, & quod ita obtinuit iudica-
 ti, & hoc idem repetit *conf. 73. num. 11. & de seruit. Urban. præ-*
dior. cap. 23. num. 11. Roland. consil. 34. numer. 8. & seqq.
vsque ad 18. lib. 2. Soccin. lun. conf. 34. num. 13. & 14. volum. 2.
 vbi nisi tortè quis velit dicere, quod puniri debeant minore
 pœna, quàm principalis prout sæpè contingit in auxiliatori-
 bur, & loquitur in his nostris terminis hominum a Marito
 coadunatorum ad effectum occidendi aduiterum Vxoris suæ,
 in quibus etiàm terminis consuluit *Paris conf. 154. num. 20. &*
seqq. vol. 4. Carer. in præct. Crimin. in tract. 3. de homicid. & assass.
§. 8. excusatur pater num. 13. vbi de Patre, qui per assassinium
 fecerat occidi filiam turpitèr conuersantem, & dicit quod
 nec Pater nec occidens tenetur *sol. 169. & §. 9. excusatur*
Maritus num. 11. vbi hoc idem tenet, in terminis Mariti, eiuf-
 que Mandatarij *fol. 170. à tergo sequitur Mart. vot. seu decisio.*
206. num. 9. Marsil. singul. 175. per tot. Vbi posita in principio
 conclusione, quod concessio vno omnia videntur esse concel-
 sa, per quæ deuenitur ad illud, ex illa infert ad præsentem Ca-
 sum, & plures adducit rationes *Cassan. ad consuetud. Burgund.*
rubric. 5. §. primo tit. Des rentes, num. 43. pag. mihi 815. vbi quod
 homines talitèr coadunati, si simul occidant cùm principali,
 non tenentur de occiso, nec de auxilio præstiro, & in eisdem
 terminis *Garz. decis. 71. per tot.*

Idque non obstante quod aliquis prædictorum proprijs manibus
 vulnerasset, vel etiam occidisset aliquem ex prædictis, prout
 Franciscus factus fuit se quatuor, aut quinq; vulneribus affe-
 cisse

cisse d. Franciscam Pompiliam in dorso: Quia in his etiam terminis militat regula de non puniendo auxiliares, seu præstantes opem maiori poena, quàm principalem; Sicuti in indiuiduo firmat ex proximè allegatis *Castren. in d. leg. Raptiores num. 6. C. de Episc. & Cleric. & dicto cons. 277. sub d. num. 3. vol. 2. Iason. in dicta l. 1. §. usufructuarius num. 5. in 2. limit. ff. de nou. oper. nunciat. Chassan. ad consuetud. Burgund. rubr. 5. §. 1. tit. des Rentes num. 43. pag. 815. & ita iudicatum fuisse testatur, Garz. d. decis. 71. ibi -- An liceat secum adhibere Socios ad hunc actum, qui si simul cum eo occidunt adulteros minimè teneantur, nec de occiso nec de auxilio, & fuit iudicatum, quod sic.*

Et in fortioribus terminis occidentis per assassinium, & sic absente etiam principali fuit originalis opinio Bald: in l. Gracchus num. 5. signanter ibi -- modo queritur nunquid Assassinius puniatur, & dicit quod non, quia illud, quod fuit licitum in persona mandantis fuit licitum in Persona mandatarij -- Cod. ad leg. Iul. de adult. Castren. in d. leg. Refectionis num. 4. ibi -- Quia, quod possum facere per me, possum facere per ministros meos ad hoc necessarios, Afflict. super constit. Regn. lib. 1. rubr. 8. num. 30. ibi -- tam per se, quàm per alium etiam cum pecunia, & sic per assassinium dicit Bald. ibidem, quod idem, quia quod licitum est in Persona mandantis est licitum in Persona mandatarij -- & testatur ita fuisse iudicatum, & lib. 3. rub. 46. n. 3. ubi pariter quod ita iudicatum fuit, & numero 4. Carer. pract. crimin. in 3. tract. de homicid. & ass. §. 8. excusatur Pater num. 13. fol. 169. & §. Nono excusatur maritus num. 11. fol. 170. à tergo Monticell. eodem tract. reg. 6. de mandat. nn. 14. fol. 59. Neuzan. Silu. nuptial. lib. 1. vo: non est nubendum numero 98. præsertim ibi -- & hoc alij mandare -- Mart. dicto vot. seu decis. 206. num. 9. ibi -- & multò magis quia Doctores firmanunt maritum, qui præ timore Adulteram occidere nequit posse alteri demandare, ut illam pro pecunia etiam occidat, & neuter puniendus est.

Quid quid in contrarium dicat Caball. dicto cas. 300. numero 73. quia ipse se fundat in autoritate *Castn. d. cons. 277. lib. 2. & Rolan. d. cons. 34. num. 19. 31. & seq. vol. 2.* Verùm Castrensis nostræ sententiæ fauet, ut videre est num. 3. Roland. verò non est attendendus, quia cum alleget illud simile de statuto permitte alicui surrere vindictam, & dicat, quod cum huiusmodi per-

permissio sit personalis, propterea non potest egredi illius Personam eius opinio est expressè contrà doctrinam Bald. Castren. Iason. & aliorum, quos allegavimus supra S. qua dicta sunt, & cum hæc nostra opinio sit æquior, & mitior, est tenenda, ut in puncto resoluit Ias. in dicta l. 1. S. ususfructuarius n. 5. versus finem ff. de nou. oper. nunc.

Neque verò huiusmodi poena exasperari potest ob præsentiam delationem armorum prohibitorum, quia ista confunditur cum delicto Bal. in l. aduersus in fine, C. de furt., Ias. in l. quod dicitur num. 3. ff. de verb. oblig. Marsil. in l. si in rixa num. 15. ff. ad l. Corn. de Siscar. & conf. 5 1. num. 5 1. vers. cum ergo ista portatio armorum, Cephal. conf. 204. num. 42. & seq. vol. 2. Farin. quest. 108. num. 166. Guazzin. defens. 26. cap. 2. num. 18. ubi etiam si pro delatione armorum esset appolita maior poena; Adeo, quod ubi constat, quod delictum fuit commissum cum causa. & iusto dolore. ut in præsentia, armorum delatio sit impunita, vel saltem puniendâ non maiori poena ea, quæ pro delicto venit apponenda, quemadmodum loquendo de armis à bannimentis reputatis proditorijs benè firmat Police de Reg. aud. tom. 2. tom. 10. cap. 5. num. 11. pag. 25.

Quæ eo faciliùs procedere debent respectu Dominici, & Francisci, qui sunt forenses, & propterea non compræhensi in quibuscumque Constitutionibus Apostolicis, seu bannimentis delationem armorum sub grauissimis pænis prohibentibus Farinacc. quest. 108. num. 17. Police ubi proximè numero 43. pag. 29.

Præsertim cum, & isti sint ætate minores, ut in Proc. fol. 35. & 304. respectu, quo paritèr casu non ligantur Constitutionibus & bannimentis Minoris abilitantibus in delictis ex detectu Potestatis Principis, seu Officialis illa condentis. Farinacc. fragm. crim. par. 1. v. bannimenta n. 23. vers. tertius est casus Cavalc. de brach. reg. part. 4. sub numero 464. Surd. decisione 197. num. 6.

Et hæc sunt, quæ in maxima temporis angustia pro meo munere colligere potui ad defensionem horum pauperum Carceratorum, nullatenus diffidens, quod Domini mei Iudices ubi noverint, quod minùs fuerit dictum, id supplere, & proferre velint. ex summa, qua pollent rectitudine, obtemperantes decreto Imperatorum Diocletiani, & Maximiani relato in leg. uni-

*onica C. ut que defunt aduoc. & sequentes monitum Hippoliti
Marfilij Insignis criminalistæ dicentis, quod Iudex ex officio
reneretur quærere defensiones Reo in pract. §. nunc videndum
num. 7. & in §. sequitur num. 43. & in §. occurrunt sub. num. 3.
vers. & non solum.*

Quare &c.

Desiderius Spretus Pauperum Adu.

Illustriss. & Reuerendiss. Domino
G V B E R N A T O R E

In Criminalibus.

Romana Homicidiorum.

P R O

**Domino Guidone Francischino,
& Socijs Carceratis.**

C O N T R A

Curiam, & Fiscum.

Iuris D. Aduocati Pauperum.

Romæ, Typis Reu. Cam. Apost. 1698

Romana Homicidiorum.

Illm̃e, & Rm̃e Dñe. **H**onoris causa, quæ **P.** Guidonem eximit ob homicidia sequuta a pœna rigorosa, eadem profectò militat ad mitigationem pœnæ ordinariæ Blasio, & Socijs, qui homicidijs interuenerunt, quamuis prætendatur pacto pretio interuuisse: Præmissis enim, quod procul versamur à crimine Assassini propter præsentiam causam habentis, vt communiter sentiunt *Gabr. conf. 170. num. 8. & sequen. vol. primo, Bertaz. conf. 143. numer. 13., Guazzin. defens. 4. capit. 13. num. 3. Gratian. discept. forens. capit. 619. num. 25. Del Bene de Immunit. Eccles. tom. 2. cap. 16. dubit. 21. sect. 3. num. 3. Thor. compend. decis. par. 3. sect. prima verbo Assassinium, vbi in fine testatur sic fuisse iudicatum, Cortiad. decis. 95. num. 27. Reuerendiss. Zaulus Episcopus Verulan. obseruat. ad statut. Faentin. lib. 4. rubr. 14. n. 17.*

Maxima controuersia fuit inter Doctores, an Pater, vel Maritus possit demandare alteri excepto filio homicidium filie, vel vxoris adulteræ, & in vtramque partem scissi valdè digladiantur, vt videre est *Farinacc. quæst. 121. num. 14. ad 18. Caball. resol. criminal. cas. 300. à num. 45. & seq.*, quamuis pro affirmatiua, & leuiori sententia excedat numerus, & in contingentia facti pluriès iudicatum fuisse constet, *Neuizz. Sylu. Nuptial. lib. 1. sub num. 98. Mart. vot. Pisan. 206. n. 9.*

Sed cum quæstio sit extra nostram hypothesim, frustraneus esset labor, & vndique inutilis, nec est tempus terendum, illius angustia præmente.

Nos versari constat in Auxiliatoribus ad homicidia perpetranda conuocatis iuxta sensum Fiscus, proindè non solum non conueniunt termini simplicis mandati ob interuentum Principalis, quia cum iste simul manum imponat crimini, ij qui idem operantur, non dicuntur Mandatarij, sed Auxiliatores, & opem ferentes *Bertazzol. conf. 143. n. 12. vers. Quo verò, & n. 13.*

Sed insuper sicuti iste eximitur ex dicta causa honoris à pœna vltimi supplicij, ita Socij, & Auxiliatores, vt vna-

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miter *Paul. de Castr. in l. refectiois num. 4. & 5. ff. Commun. Prædior.*, & idem repetijt *in cons. 277. sub num. 2. versic. Ego autem, & sub num. 3. in fine*, qui pro contraria solet allegari *lib. 2., Ias. in l. prima §. Usufructuarius sub num. 5. ff. de oper. nou. nunciat. Cepoll. cons. 4. sub nu. 15., & cons. 73. numer. 11., & de seruitutibus Urbanor. Prædior. capit. 23. num. 10. in fine, & 11. Paris. cons. 144. num. 21. & seqq. part. 4. Soccin. Iunior. cons. 34. num. 12. lib. 2. Facchin. consil. 36 num. 22. versic. Quoniam præter quam lib. 2. Cassan. ad consuetud. Burgundia tit. reuditib. vendit. rubric. 5. num. 44. fol. mihi 948., Marsil. singular. 175. & in l. unica num. 11. Cod. de rapt. Virgin., Grammat. super constit. si maritus num. 2. & seq. Garz. ex gratia viden. dec. 71. per tot. Farinacc. quæst. 121. num. 20., & num. 87.*

Qui verò citantur pro contraria opinione non loquuntur in nostris terminis, sed de marito alteri demandante homicidium Vxoris adulteræ, non autem de Socijs occidentibus vnà cum Viro, vt in casu nostro, vt videre est *Felin. in cap. Si verò sub num. primo ergà finem de sentent. excommun. & in cap. quæ in capit. quæ in Ecclesiarum sub num. 13. post med. de constit.*, *Bartol. in l. non solum §. Si mandato meo num. 5. ff. de iniurijs*, *Marsil. in dict. l. unica num. 3. Cod. de rapt. Virgin.*, & *in singul. 448. Angel. de malefic. verb. Che hai adulterata la mia Donna num. 24.*, *Grammat. in d. constitutione si maritus n. 9.*

Et in contingentia facti semper socij, qui auxiliati sunt Maritum occidentem adulteram gauisi sunt eadem Indulgentia, quam Principalis reportauit; hoc est semper euaferunt penam vltimi supplicij; imò impuniti, & absoluti remanserunt *Cepoll. de seruitut. Urbanorum Prædiorum dicto capit. 23. num. 11. in fin. & consil. 4. num. 15. in fin. Neuzzan. in Sylua Nuptial. lib. 1. sub num. 98. Iason. in dicta leg. prima §. Usufructuarius num. 5. ff. de nou. oper. Nunciat. Afflict. super Constit. Regn. lib. 1. Rubric 8. de Cultu Paris. n. 30.*

Nec afficit distinctio *Caballi dicto cas. 300. num. 73.* vbi Socij possunt quidem impunè assistere Marito, vel Patri occidenti filiam. vel Vxorem respectiuè, vt sæcuriùs interficiant, non tamen possunt manibus se ingerere, & occi-

cidere, nam aliàs de occiso tenerentur.

Quia pro fundamento suæ distinctionis figit pedes in *Paul. de Castr. dicto cons. 277. lib. 2.* qui tantum abest, quod suam intentionem probet, quin potius mirificè retorqueatur. Nam postquam sibi obiecit huiusmodi difficultatem *sub num. 2.* addit ibi — *Ego autem omnimodam contra, quod nec ille, qui interfecit, nec qui Congregationem fecit potest dici, quod teneantur de homicidio quo ad imponendam pœnam Capitaalem.*

Et in *consil. Rollandi à Valle 34. num. 29. & 31.* Sed parcat mihi tam eximius Doctor, quia & si conetur confutare Paulum de Castro in *dicto consil. 154.* pro nobis militantem sub prætextu quod loquatur contra communem opinionem, hoc non sufficit ex supra citatis auctoritatibus, & si tempus pateretur clariùs ostendissèm.

Præterea *Rollandus allegat Parisium in cons. 154. lib. 4.* Sed peterat illum omittere, quia probat expressè contra ipsum in *specie num. 22.* ibi — *Et in terminis nostris est optima decisio Pauli de Castro in præallegato Consilio ubi in fortioribus terminis etiam includendo casum præsentem concludit, conscios, præsentem, & associantes Martitum in actu dicti homicidij, ac præstantes opem puniri non debere maiori pœna, quam Principalis per Regul. Accessorium de Regul. Iur. in 6. vltra punctualem auctoritatem Marsilij, & concludit, quod ad omne peius considerata omni rigorositate puniri non deberent vltra pœnam temporalis relegationis.*

Vltra quod *Rolandus in dicto Consilio* expressè confutatur à *Facchin. dicto consil. 36. num. 22. versic. Quoniam præterquam lib. 2.* Nec sine viua ratione, nam sicuti qualitas delictum alterans in principali delinquente illud exasperat etiam in Auxiliatoribus, quotiès ipsis sit cognita; Ità omnis æquitas ex postulat, quod qualitas minuens pœnam in Principali agnita ab Auxiliatoribus, ijs quoque suffragetur *Decian. tract. Crimin. lib. 9. cap. 33. num. 8. & cap. 36. num. 27. Parinacc. quæst. 135. num. 34. & 36.* proinde *Caballus* remanet sine fundamento stabili, & contra mentem *tot Doctorum* allegatorum nullam distinctionem facientium inter assistentes simpliciter, & inter cooperantes ad homicidium, imò omnes loquuntur

tur de Auxiliatoribus , & insuper pluries iudicatum reperitur etiam in fortioribus terminis mandati , vt supra dictum est ; & aded honoris causa est efficax , vt non solum se diffundat in Mandatarios simplices , sed etiam in Mandatarios qualificados Assassinijs qualitate , eosque absolui fecerit , vt *decisum* reperimus apud *Carer. pract. Crimin. §. nono excusatur nu. 11. fol. mibi 197. ter. Mart. Voto Pisan. 206. n. 9.*

Vndè si Mandatarij , & Assassinijs eximuntur à pœna ordinaria mortis , quotiès occidant Adulteram de Mandato Viri , necessariò sequitur quod distinctio *Caballi* non sit vera , nec sit recepta in practica , quia si sunt Mandatarij , non possumus negare , quod proprijs manibus occiderint , & nihilominus hanc opinionem Reis fauorabilem contra *Caballum* seruari in practica testatur *Clar. §. Homicidium num. 51. circa fin. ultra decisiones superiùs allatas.*

Si igitur pœna vltimi supplicij non sunt plectendi Blasius , & focij ob opem præstitam in Homicidijs , frustra quæritur , an pro habenda ab eorum ore sincera veritate possint supponi tormento Vigiliæ , quod duo requisita exposcit , alterum quod militent indicia vrgentissima contra Inquisitum , alterum quod crimen sit atrocissimum ex præscripto *Bulle Reformationis san. mem. Pauli V. §. 10. n. 3. Scanarol. de Visit. Carcerat. lib. 2. §. 6. cap. 4. num. 13.* , & ante eum *Cartar. de mod. Interog. Reor. lib. 4. cap. 2. n. 7.* , & *Baiard. ad Clar. §. fin. quæst. 64. post num. 105. Farinacc. quæst. 38. num. 71. Guazzin. defens. 30. cap. 21. num. 13. in princip. vers. Et non debet.* & *vers. in hac Curia.*

Et licet amplissimæ sint facultates Tribunalis , vbi dispensatur vni ex dictis requisitis , nunquàm tamen vidi adhiberi dictum tormentum , nisi vbi non dubitatur , quod crimen de quo prætenditur per Fiscum elici confessionem ab Inquisitis mereatur pœnam vltimi supplicij.

De qua agi credere non possumus ob prætenfam conuenticulam , quia congregati non tenentur vlla pœna ob conuenticulam , sed tantum qui illos congregauit , vt egregiè *Bald. in cap. quæ cause num. 13. vers. Tu dic de his , quæ vmetusque caus. Farinacc. q. 113. n. 140.*

Nec in hoc casu tractari potest de pœna assertæ conuenticulæ

culæ respectu D. Guidonis, quia causa, ob quam congregavit Homines illi suffragatur ad euadendam pœnam, cum licitum sit convocare Amicos, & socios ad reintegrandam suam existimationem, *Marsil. in l. 1. num. 13. C. de Rapt. Virgin. Paris. conf. 154. num. 7. & num. 15. p. 4. Farinacc. d. qu. 121. nu. 87. Baiard. ad Clar. §. Homicidium num. 195. 196. & 197. vers. & etiam potest alios congregare, & alij supra citati.*

Quod comprobatur nam quoties quis iusto dolore motus conuocat Homines pro vindicanda iniuria non incidit in crimen, & pœnam conuenticulæ, *Corn. conf. 216. num. 3. vers. Quinimò si multi lib. 3.*

Et licet *Farinaccius quæst. 113. n. 155.* declaret id procedere, si incontinenti fiat; Secùs si ex interuallo, supplico aduerti, quod quicquid esset si ageretur de vindicta iniuriæ personalis, in quibus terminis ipse loquitur, quando tamèn agitur de iniuria lædente honorem, vindicta sumpta in omni tempore dicitur facta incontinenti, tùm quia semper vrget, & præmit, tùm quia potius dicitur Reintegratio, & reparatio honoris, quam alias in existimatione læsus consegui non potest, quam ultio, & vindicta, vt fatiùs credimus satisfactum esse in alia pro Domino Guidone.

Sed cessat omnis prorsus difficultas, quia forsàn procedi posset pro conuenticula, si ad malum finem fuissent congregati Homines, & nullum alium delictum exindè sequutum esset, at cum fuerint conuocati iuxtà sensum Fisci ad committenda Homicidia, eaque patrata fuerint nequit amplius agi de conuenticula prohibita, sed de Homicidijs, quia coadunatio hominum tetendit ad eundem effectum, vt est *magistræ votum, Seraphin. dec. 61. num. 4. & 7. & ibi aliud votum Blanchett. nu. 19. & 22. post consil. Farinac lib. 2. vbi quamplurimæ autoritates congeruntur.*

Ea potissimum ratione, quia vbi principium, & finis sunt illicita, attenditur finis, & non principium, vt docet *Barthol. viden. in l. quod ait lex §. quod ait num. 3. ff. ad leg. Iul. de adult. A lex. conf. 75. n. 6. lib. 3. Marsil. in pract. §. quoniam n. 91. Boss. in pract. tit. de fauor. defens. n. 7.*

Additur, quod hominum congregatio non est propter se
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illicita, imò potest esse quandoque licita, & approbata, vt in casibus relatis à *Farinac. q. 1 13. n. 150. 153. 156.*; sed propter malam consequentiam, & propter prauum finē, propter quem fieri solet, proindè cum prohibitio congregationis hominum non propter se, sed propter aliud facta, sit magis attendi debet finis, quam ea, quæ finem præcedunt *Seraphin. d. vot. 61. n. 7.*

Neque rigorosa pœna mortis ingerenda esset pro prætensa delatione armorum reprobata mensuræ nedum contra Dominium Gambassini, & Franciscum Pasquini, quia vti Forenses, nec diù versantes in Statu Ecclesiastico per tantum temporis spatium, quo præsumi posset in ipsis scientia, sed nec contra cœteros; nam & si per Constitutiones, & Bannimenta comminata sit pœna vltimi supplicij etiam pro eorum delatione, siuè retentione, tamen cum armorum gestatio similiter propter se non prohibeatur, sed propter perniciosum finem, qui eam sequitur, vel sequi potest, cumque dirigeretur ad dicta Homicidia, eaque quamuis non fuerint in totum licita, non tamen sunt pœnitùs inexcusabilia, huiusmodi delationis armorum crimen debet confundi cum fine, pro quo asportata fuerunt, quia vnum infert in aliud, ne peiora videantur media, quam finis, & licet secundum aliquorum opinionem pœna gestationis armorum non confundatur cum crimine admissio, quoties sit grauior, hoc tamen videtur intelligendum esse, quando crimen cum eis patratum sit vndique illicitum, & inexcusabile, non tamen vbi minuitur, & extenuatur, atque excusatur saltem in parte à causa, ob quam commissum est.

In omnem casum cum iure communi attento armorum delatio sit leue Delictum, *Bartolus in l. leuia num. 9. ff. de Accus.*, & *in l. Diuus la 2. num. 8. circa med. ff. de Custod. Reor.*, *Marsil. in Pract. crim. §. Pro complemento num. 44.*, *Danz. Pugn. Doctorum tit. de Armis cap. 2. num. 1.*, *Rouit. super Pragmatic. Regn. Pragm. 4. de Armis num. 34.*, *Caball. Resol. crimin. cas. 107. num. 17.*

Licet per Cōstitutiones particulares, & Bannimēta auēta sit pœna fere ad summum Apicem, non tamen huiusmodi auctio illius naturā immutat, adeoūt sicuti de iure communi

muni ob eius læuitatem non infertur Tortura ad habendam veritatem ab indiciatis de dicta dilatione , *Farinacc. q.42.n.7.* ità nec vigore Constitutionum , & Statutorum, quæ pœnam auxerunt, vt optimè *Bald.in l.si cum in vltima lectura n.2.ff.fi quis caution.Coualcan. de Brach.Reg. part. 3. sub n.258. vers.tamen supradixi* , *Guazzin. defens. 30.cap.3. sub n.3.vers.Plus dicit.*

Et in terminis tormenti Vigiliæ , quod nequeat inferri prò Delicto, quod de sui natura non sit atrocissimum, sed vigore Constitutionis habeatur pro tali, quoad pœnam, nisi expressè illius natura mutetur etiã circa modum procedendi *D.Raynald.in suis obseruat.crimin.cap.5. §. 1. ad 3.n.125. & seq.*

Et videmus in Bannimentis Illustriss. D. mei , quod vbi voluit posse procedi ad tormentum Vigiliæ in casibus, in quibus de iure procedi non possent, id expressè declarauit, quod prò certo non fecisset, si potuisset tale tormentum ingeri in Delictis de iure non capitalibus, sed vigore Bannimentorum pœna vltimi supplicij expiandis.

Quarè &c.

H. de Archangelis Pauper.Proc.

Illustris. & Reuerendiss. Domino
GVERNATORE
In Criminalibus.

Romana Homicidiorum

P R O

**Blasio Agostinelli, & Socijs
Carceratis.**

C O N T R A

Fiscum.

Memoriale Facti, & Iuris.

Romæ, Typis Reu. Cam. Apost. 1698.

S V M M A R I V M

Num. 1.

DLe 24. Iunij 1694. Pro D. Petro Comparino contra quofcumque examinata fuit Romæ per me &c. ad perpetuam rei memoriam Angelica filia q. Petri q. lo: Baptiftæ de Castelluccio Aretinæ Diœceſis &c. ætatis ſuz annorum 35. circiter cui delato ſibi iuramento veritatis dicendæ depoſuit, prout infra videlicet.

Depoſitio iurata Teſtis ſupcr paupertate d. D. Guidi Franceschini, & miſerijs paſſis à DD. Comparinis tempore, quo permanſerunt in illius Domo in Ciuitate Aretina.

Dico à V. S. per verità come trouandomi in Arezzo nel meſe di Gennaro proſſimo paſſato in Caſa della Sig. Maddalena Baldi Albergotti, mi fù propoſta l'occaſione d'andare à ſeruire la Signora Beatrice Franceschini, e ſuoi figlioli &c. mi riſoſi d'andarui, ſi che eſſendo andata à Caſa di dd. Signori Franceschini, parlai con la detta Signora Beatrice, la quale mi tirò da parte in vn ſtantiolino, e mi diſſe, che mi haucria pigliata per Serua, mà che non haneſſi mai trattato à parte con li due vecchi, ch'erano in Caſa, vno de' quali era il Sig. Pietro Comparini, e l'altro la Signora Violante ſua moglie, e di più m'impoſe, che ſe per fortuna mi hauette chiamato qualcheduno di dd. vecchi nella loro Camera io non ci fuſſi andata, ſe prima non dimandauo licenza à lei, e con queſte condizioni mi accettò al ſeruizio, onde eſſendoui entrata, offeruai, che la Signora Violante per il più ſe ne ſtaua nella ſua Camera piangendo, e ſe bene erano freddi così rigorofi ſe ne ſtaua ſenza fuoco, ſi che io compaſſionandola di naſcoſto di detta Beatrice pigliauo il fuoco del mio Caldanino, e glielo portauo, e non più toſto glie lo porgeuo la detta Signora Violante mi mandaua via dalla ſua Camera, perche detta Signora Beatrice non hauette pigliato ſdegno, che io hauette fatto detta carità, anzi vna volta trà l'altre, che ſe n'accorſe mi fece laſciare il foco nel Cammino con leuarmi la Paletta dalle mani, con brauarmi, e dirmi, che ſelei lo voleua, foſſe venuta da ſe à pigliarſelo, perche non voleua, ch'io faceſſi alcun ſeruizio à dd. Signori Comparini, li quali ne pure trà di loro poteuano parlare, perche tanto il Sig. Guido Franceschini, quanto il Sig. Canonico D. Girolano ſuo fratello, e Signora Beatrice loro Madre ſi metteuano chi à vna porta della loro ſtanza, e chi ad vn' altra porta della medefima ſtanza à ſentire ciò, che li dd. Signori Comparini trà di loro diceuano, e diſcorreuano, e cio ſeguiua ogni ſera, & ogni mattina, ſin tanto, che non vſciua dalla detta Camera, e Caſa il detto Signor Pietro, il quale ſe ritornaua di notte non voleuano, che fuſſi andata à fargli lume per le ſcale, anzi che vna volta, che poteua eſſere vna mezz' hora di notte in circa, che tornò à Caſa detto Sig. Pietro, & hauendolo io ſentito raſchiare pigliai il lume per andargli incontro, di che eſſendofi accorto il Sig. Guido mi leuò il lume dalle mani, con

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dirmi,

dirmi . che badassi à sedere, e che non mi accostassi, se non voleuo saltare la finestra , il che tanto più mi pareua male , quanto, che haueuo inteso dire in loro Casa, che prima, che entrassi al seruizio di dd. Franceschini tornando vna sera di notte il detto Signor Pietro per saire le scale senza lume, cadde per le medeme scale , e si fece vna bruttissima stincatura , per la quale fù obligato guardare il letto per molti giorni . Nell' istesso tempo, che stauo al detto seruizio successe vna mattina mentre si pranzaua , che li dd. Franceschini diedero certi disgusti alla detta Signora Violante, alla quale per causa de' medemi venne vn' accidente, ch' appena arriuò nella sua stanza, e si buttò sopra vna sedia di paglia doue si suenne , di che essendosi accorta la Signora Francesca Pompilia moglie di detto Signor Guido, cominciò à lagnarsi, e gridate ad alta voce dicendo : La Signora Madre mia si more , à che accorsa io , volsi slacciarla , e portargli vn poco d' aceto , e di foco , mà perche di questo non ve n' era , pigliai della legna , e la misi nel Camino per accenderla , il che hauendo veduto la detta Signora Beatrice, lei medesima leuò la legna dal foco, con sdegno grande , e mi disse , che io pigliassi la Cenere , che quella poteua riscardargli li piedi , si che io pigliai la cenere , che era nel detto Camino, la quale per il freddo grande , che regnaua , quando arriuai nella Camera doue staua detta Signora Violante mezza morta , già detta cenere era fredda , si che tanto io, quanto la detta Signora Pompilia piangendo ambedue spogliassimo detta Signora Violante, e la mettessimo à letto, che era giaccio , e perche io piangeuo quando tornai in Cucina dopò hauer messa à letto essa Signora Violante la detta Signora Beatrice disse, vuoi, che io pigli vn poco di capecchio per nettarsi gl'occhi , il che senti ancora la Signora Francesca Pompilia ne fece qualche schiamazzo à detta Signora Beatrice, non volse , che più torna ssi in detta Camera , ne volse, che li facessi vn poco di pancotto conforme detta Signora Violante mi haueua imposto . Successe pochi giorni dopò, che fù del mese di Febraro susseguente, che mentre li Signori Franceschini , Francesca Pompilia , Sig. Pietro , e Signora Violante stauano à tauola discorsero di voler mai mandar via di Casa , si come anche antecedentemente li detti Franceschini mi haueuano licentiato ; il che inteso dalla detta Signora Francesca Pompilia, che com' hò detto staua à Tauola con l' altri, disse al detto Sig. Pietro , e Violante , sapete perche la vogliono mandar via ? Perche si sonno dati à credere, che lei mi habbia ridetto, che la Signora Beatrice gli dicesse li giorni passati, che voleua pigliarsi il capecchio per sciugarli le lagrime dagl'occhi, quando piangeua per l' accidente successo alla detta Signora Madre ; Allora il detto Sig. Pietro disse, pregando dd. Signori Franceschini , che mi haueffero in gratia sua tenuta per otto , ò dieci altri giorni , perche in occasione , che lui voleua ritoruare in Roma assieme con ia Signora Violante mi haureb-

bc

be condotto con loro, e che questa gratia poteua lui sperarla da loro, essendo la prima, che li haueua domandato, a che niuno de' Franceschini rispose, mà leuatosi da Tauola il detto Sig. Guido venne alla volta mia, e mi diede due bonissimi schiaffi, e vi accorsero ancora, mentre il detto Signor Guido mi daua il detto Canonico suo fratello, e mi diede de calci, e la Madre de pugni dicendomi yà via, adesso, il che sentito, e veduto dalla detta Signora Violante, commiserandomi disse à dd. Signori doue volete, che yadi adesso questa pouerella, e tutti li dd. Franceschini d'accordo dissero alla detta Signora Violante, vattene via con la Serua ancora tu, dicendogli carogna, & altre parole ingiuriose, si che detta Signora Violante andò nella sua Camera per vestirsi, & il Signor Canonico sfoderò vna spada, e li corse dietro in detta Camera, e ferrò la porta in modo, che temendo io, che non dasse qualche ferita alla detta Signora Violante, corsi per entrare in detta Camera, e trouai, che il detto Signor Canonico s'era ferrato dentro detta Camera, si che tanto io, quanto il detto Signor Pietro, e Francesca Pompilia ci mettemmo à piangere, e gridare per aiuto, stimando Noi, che il detto Canonico là dentro ammazzasse detta Signora Violante, e dopo qualche poco di tempo mi partij dalla detta Casa, e lasciai, che dd. Signori Coniugi, e Signora Francesca Pompilia gridauano con dd. Signori Franceschini; In tutto il tempo, che io mi trattenni al seruitio delli detti Signori Franceschini in Arezzo, com'hò detto di sopra, posso dire per verita d'hauer seruito à Tauola sempre matina, e sera li detti Signori Franceschini, Signora Francesca Pompilia, Signor Pietro, e Signora Violante de Comparini, e per il vitto, e mangiare di tutti dd. Comenzali, il Sabato detti Signori Franceschini comprauano vn' Agnellino da latte, nel quale spendeuanò dodici, ò quattordici gratie al più, e questa la detta Signora Beatrice, che cucinaua lo ripartiuua per tutta la settimana, anzi la Testicciola d'vno di detti Agnellini si ripartiuua per l'antipasto in tre volte, e l'altre volte si seruiua per antipasto della Coratella, e Budella ripartitamente per tutti li giorni della settimana, che si mangiua carne, ne vi era altra sorte di carne à tauola per sodisfare alli bisogni di ciaschedun de' Comenzali. Quando non si compraua il Sabato, come hò detto detto Agnellino il Signor Guido, ò daua li denari à Giuseppe Garzone di Casa, perche comprasse due libre di carne vaccina, quale ogni matina la detta Signora Beatrice da se medema metteua à cucinare, ne voleua, ch'altri ce s'ingerisse, e di questa si mangiua à Tauola, e si ripartiuua anche per la sera, e perche detta carne era così dura, che il detto Signor Pietro non poteua mangiare, perche non si faceua cuocere, il detto Signor Pietro restaua per il più senza mangiar carne, ma mangiua solamente vn poco di pane stufato, mal conditionato, & vna fettarella di calcio, e con

questo se la passaua detto Signor Pietro ne' giorni, che si compra la vaccina, ne' giorni poi di magro si mangiava vna minestra di legumi, con vn poco di Luccio salato, e qualche volta vn poco di castagne aleste, sempre però ò si mangiasse di magro, ò di grasso, il pane era negro come inchiostro, e non leuito, nè ben conditionato, il vino poi, che seruiua per la detta Tauola era vn fiasco nel quale prima di metterci il vino la detta Signora Beatrice mi ci faceua mettere dell'acqua fino alla metà, e così ammezzato d'acqua, mi faceua empir il fiasco di vino, e molte volte era più acqua, che vino, e questo fiasco si metteua à Tauola, & ordinariamente bastaua per tutti li Commensali, ancorche il fiasco à rigore non tenesse più di tre fogliette, e mezza all'vso di Roma. Inoltre dico, che partita io dal detto seruiizio, non molti giorni doppo, fù detto pubblicamente per Arezzo, che essendo ritornato la sera, il detto Signor Pietro à Casa verso vna mezz' hora di notte in circa haueua trouato, che la porta di strada era serrata in modo, che lui non poteua aprirla, sì che fù astretto à bussare, nè vedendo la Signora Violante, che alcuno di Casa si moueua per andarli ad aprire, lei medema scese le scale per aprirle, mà perche la porta era serrata con la chiaue, benche hauesse chiamato il Signor Guido, & altri, che erano in Casa, nondimeno non si mosse alcuno, per andarli ad aprire, e che perciò il detto Signor Pietro sen'andasse à dormire all'Osteria, & essendo ritornato la mattina à casa per riuedere tanto la Signora Violante, quanto la Signora Francesca Pompilia, si diceua parimente per Arezzo, che essendosi lamentato il detto Signor Pietro per esser stato sestrato fuori di casa di detto Signor Canonico, ingiuriando tanto il detto Signor Pietro, quanto la detta Signora Violante, nacque tra di loro nuoua contesa, e perciò ambedue erano stati cacciati fuori di casa, e che la Signora Violante fù riceuuta dal Signor Dottor Borri, doue la sera cenò, e la notte dormì, e che il detto Signor Pietro era andato all'Osteria à cenare, e dormire, il che sentito da me me n'andai à casa del detto Signor Borri per vedere la detta Signora Violante, ma non fui introdotta, perche la moglie del detto Signor Borri mi disse, che me nè fussi andata à fare li fatti miei, perche non voleua, che li Franceschini, che stauano in faccia alla sua casa si fossero accorti, che io fussi andata à vedere la detta Signora Violante, e che perciò ne fusse nato qualche disordine, la mattina seguente poi andai alla detta Osteria doue mi era stato detto, che vi era andata anche la detta Signora Violante per trouare il detto Signor Pietro, mà non vi trouai alcuno di loro, e mi fù detto dall'Osse, che erano usciti; sì che per non sapere doue trouarmeli, me ne tornai à casa della detta Signora Maddalena Albergotti, doue mi tratteneuo, e sentij doppo dire, che tanto detto Signor Pie-

tro

tro, quanto la Signora Violante erano ritornati alla detta Osteria, doue haueuano pranzato, e che poi per l'interposizione del Signor Commissario d'Arezzo erano rimessi d'accordo con detti Franceschini, che però erano ritornati à casa loro, e sentiuo dire ancora, che continuorno detti Franceschini à maltrattare, & ingiuriare detti Signori Coniugi nello stesso modo, che continuamente faceuano nel tempo, ch'io stauo al loro seruitio, e che però vltimamente furono necessitati partire d'Arezzo, e tornarsene in Roma, e tutte le sudette cose le sò per hauer veduto io medesima, e sentito li mali trattamenti, che detti Signori Franceschini faceuano à detti Signori Comparini, e l'ingiurie, che diceuano, tanto à loro, quanto alla detta Signora Francesca Pompilia, e rispettiuamente per hauerle intese dire pubblicamente per Arezzo, dou'è publico, e notorio, e n'è publica voce, e fama in causa scientiæ &c.

Adi 17. Giugno 1697.

Attestiamo noi infrascritti à chiunque fà di bisogno, come la verità si è, che la Signora Francesca Pompilia Comparini moglie del Signor Guido Franceschini, si è più, e più volte fuggita di casa, e andata correndo, quando da Monsignor Vescouo, e quando dal Signor Commissario, e quando da vicini per li continui strapazzi, e mali trattamenti, che li veniuano fatti, tanto dal predetto Signor Guido suo Marito, che dalla Signora Beatrice sua Socera, e dal Signor Canonico Girolamo suo fratello, e ciò lo sappiamo per essercj incontrati in essa, quando come sopra fuggiu, & esserne di ciò publica voce, e fama in tutta la Città d'Arezzo; In fede di che habbiamo sottoscritta la presente di nostra propria mano questo dì, & anno sudetti &c.

Io Canonico Alessandro Tortelli affermo essere la verità quanto sopra, & in fede hò scritto di propria mano &c.

Io Marco Romani affermo essere la verità quanto sopra, & in fede &c. mano propria.

Io Antonio Francesco Arcangeli affermo esser la verità di quanto sopra si contiene mano propria.

Io Cammillo Lombardi affermo quanto sopra si contiene mano propria.

Io Francesco Iacopo Conti di Bissignano affermo quanto si contiene, & in fede &c. mano propria.

Io Urbano Antonio Romani Sacerdote Aretino, & al presente Curato della Chiesa Parochiale di S. Adriano affermo essere la verità di quanto sopra si contiene, & in fede hò scritto di propria mano.

Sequitur recognitio manus in forma &c.

Num. 2.

Diuersæ attestatio-
nes super recursu
Franciscæ ad Episco-
pum, & Commissa-
rium propter scru-
tias Guidonis Viri,
& Consanguineorù

Particula Epistolæ scriptæ à D. Thoma de Romanis Auunculo Guidonis Franceschini q. Petro Comparino Romam

Molt' Illustre Signore, Signore Padrone Offeruandis.

Non posso far di meno &c. partita, che ella fù di poco la Signora Francesca &c: fuggì di casa, e se n'andò in S. Antoni o, quali corsero li Signori Guido, Canonico, e Beatrice &c. accio ella tornasse à dietro, & in questa credenza la Signora Francesca tornò à casa &c. Ieri essendo le Signore Francesca, e mia Sorella in Duomo alla Predica fornita, che fù nell'andarsene, quando fù vicina alla Porta di Monsignore se ne fuggì in Palazzo, doue che era più vicino ad vn'ora di notte, che erano in Palazzo con grandissimo contrasto &c.

Particula alterius Epistolæ scriptæ per D. Equitem Bartholomæum de Albergotis Petro Campanini.

Illustrissimo Signore, e Padrone Colendissimo.

Nel ritorno che feci &c. la Signora Sposa quà stà malenconica, e due sere doppo la partenza di lor Signori fece strepito grande, perche non voleua andate à dormire col Signor Guido suo Consorte &c. Ieri giorno delle Palme la Signora Sposa andò &c. alla Predica &c. e nel partirsi si cacciò à correr nel Palazzo del Vescouo &c. si messe à sommo le scale, e vi stiede fino à mezz'ora di notte, e ne la Signora Beatrice, ne Signor Guido erano sufficienti per farla ritornare à casa, già che il Vescouo non gli diede vdienza, ma vi accorte il Segretario del Vescouo, il quale esortò il Signor Guido, e la Signora Beatrice, à non strapazzare la Signora Sposa &c. basta doppo le tante bisticcie ricondussero la Signora Sposa à casa &c.

Num. 3.

Depositio Franciscæ super ass. Epistolis ab ea scriptis Abbati Franceschino & prius delineatis à Viro registrata in Processu fabricato super prateusa fuga.

Die 21. Martij 1697. Constituta Francisca Comparina &c. & interrogata an nunquam transmiserit aliquam Epistolam ad Abbatem Franceschinum hic in Vrbe tempore quo permansit in Aretio.

Respondit. Io mentre stauo in Arezzo scrissi ad istanza di mio Marito all' Abbate Franceschini mio Cognato qui in Roma, ma perch'io non sapeuo scriuere esso mio Marito faceua la lettera col toccalapis, e poi mi faceua ripassarla sopra colla penna, & inchiostro da me, e mi diceua, che suo fratello hauea gusto d'hauer qualche mia lettera scritta da me, e questo fù due, ò trè volte.

Interrogata an si videret aliquam ex Epistolis vt supra scriptis, & transmissis ad Urbem ad eundem Abb. Franceschinum recognosceret &c.

Respondit - Se V.S. mi facesse vedere qualcheduna delle lettere da me scritta come sopra, e mandate all' Abbate Franceschini le riconoscerai benissimo.

Et ostensa sibi per me de mandato Epistola, de qua in Processu incipien. -- Carissimo Signor Cognato sono con questa &c. & finien. &c. -- Arezzo 14. Giugno 1694. affectionatissima Serua, e Cognata Francesca Comparini ne Franceschini.

Re-

Respondit hò visto, e veduto benissimo questa lettera mostrata-
mi d'ordine di V.S. che comincia -- Carissimo Signor Cognato
sono con questa &c. e finisce Francesca Comparini ne
Franceschini, & hauendola osservata mi pare, ma non posso
attestare per verità, che sia vna lettera da me scritta nella con-
formità sudetta al Signor Abbate Franceschini mio Cognato
&c.

Carissimo Cognato .

Sono con questa à riuertir V.S., e ringratiarla dell'operationi hà
fatte per collocarmi in questa Casa, doue lontana dalli miei
Genitori viuo, ora vna vita tranquilla, & vna salute perfetta
non hauendo li medemi à torno, che mi contristauano gior-
no, e notte con li peruersi loro comandamenti contro la leg-
ge humana, e diuina à non amare il Signor Guido mio marito,
e fuggire di notte dal letto del medemo con farmeli dire, che
seco non ci haueuo genio, che non era mio marito, perche
seco non hò figli, e con farmi fare in più volte le fughe dal
Vescouo, senza veruna cagione con farmeli dire, che io vole-
uo far diuortio con il Signor Guido, e permettere vn gran di-
sordine in Casa, disse mia Madre al Vescouo, al Signor Gui-
do, e poi per la Città, come il Signor Canonico mio Cognato
mi hauesse richiesto dell'honore cosa non mai pensata dal
medesimo, mi stimolauano di continuar i consigli lontani dal
giusto, e dalla pace, che si deue al marito con lasciarmi nella
loro partenza per espresso comandamento d'obediencia ad
ammazzare il marito, e dare il Veleno alli Cognati, e Socere,
ad incendiare la Casa, e romper vasi, & altro, acciò non pa-
resse doppo partiti, che fossero stati loro appresso il Mondo,
che mi consigliuano à fare tante leggierzze, & in fine della
loro partenza mi lasciorono, che io mi sciegliessi vn Giouine
à mio genio, e che seco me ne fuggissi à Roma, e tanr'altre
cose, che per roffore tralascio, ora che non hò chi mi sollieui
la mente godo vna quiete di Paradiso, e conosco, che li miei
Genitori mi guidauano per loro pazzia al precipitio, onde ri-
conoscendo li spropositi fatti per comandamento de' miei Ge-
nitori ne chiedo perdono à Dio, à V.S., à tutto il mondo vo-
lendo esser buona Christiana, e buona moglie del Signor Gui-
do mio, quale tante volte mi sgridaua con maniera amorosa
dicendomi, che vna volta l'haurei ringraziato delle riprensio-
ni mi faceua, e di questi cartiui consigli mi faceuo conoscere,
che mi dauano li miei Genitori, e mi confermo. Arezzo
14. Giugno 1694.

Num. 4.

Tenor Epistolæ scri-
ptæ vti supra Abbati
Franceschiano .

Affettionatissima Serua, e Cognata
Francesca Comparini ne' Franceschini .

Foris.

Die Lunæ 13. Maij 1697.

Num. 5.

Depositio Francisca
Pompilia, quod ro-
gauerit Canonicum,
quod sibi presentaue-
rit auxilium in fuga.

Francisca filia Petri Comparini &c.

Interrogata vt dicat qua de Causa, & quo tempore præcisè dis-
cessit à Ciuitate Aretij, & ad quem effectum respondit.
Raconterò à V. S. &c. vn mese fà in circa andai à confessar-
mi da vn Padre di S. Agostino, che li diceuano il Romano,
e gli raccontai tutti li miei guai pregandolo, che scriuesse in
mio nome, perche io non sò scriuere, à mio Padre con rap-
presentargli, che io ero disperata, e che ero necessitata di par-
tire da mio marito, e venirmene da lui in Roma, mà non
ebbi risposta, e così non sapendo à chi ricorrere per mettere
in esecuzione questa mia volontà, e pensando che nessuno
del Paese, ò per parentela, ò per amicizia di mio marito non
mi hauerebbe assistito; finalmente mi risolsi parlarne al detto
Caponfacchi, perche sentiuo dire ch'era huomo risoluto con-
forme passando vn giorno auanti la Casa mia in tempo, che
mio marito era fuori di Città, lo chiamai, e dalle Scale gli
parlai con rappresentargli il pericolo, nel quale mi trouauo
anco per causa sua, e che perciò lo pregauo à volermi con-
durre quà in Roma da mio Padre, e mia Madre, mà esso mi
replicaua, che non voleua in conto alcuno ingerirsi in questa
faccienda, perche farebbe stato malcontento da tutta la Città,
tanto più, ch'esso era amico della Casa di mio marito, mà io
lo scongiurai tanto, e gli dissi, che era opera di Christiano li-
berare dalla morte vna poueta donna forastiera in modo tale,
che l'indussi à promettermi, che mi hauerebbe condotto come
sopra, & allora mi disse, che hauerebbe fermato il Calese,
e che quando fosse stato aggiustato nel passare, che hauerebbe
fatto auanti Casa nostra, me ne hauerebbe dato il segno con-
farsi cadere il Fazzoletto, mà essendoci passato il giorno se-
guente, ch'io stauo alla Gelosia non fece detto segno, & il
giorno susseguente essendo ripassato come sopra ci riparlai
nuouamente, e mi dolsi con esso, ch'hauesse mancato alla
parola datami, e lui si scusò, che non haueua trouato Calese
in Arezzo, & io gli replicai, ch'in tutti li modi l'hauesse pro-
curato anco di fuori conforme promise di fare, e la Domeni-
ca vltima del mese passato ripassando auanti Casa fece il segno
con il Fazzoletto come haueua detto, e così essendo andata
à letto con mio marito la sera, & accortami la notte, che il
medemo dormiuo mi alzai da letto, mi vestii, e presi alcune
robbeciuole di mio uso, vna scatola, con molte bagattelle
dentro, & alcuni denari, che non sò quanti fossero da vn
Scrigno, che vi erano anche de' miei proprii conforme appa-
risce dalla nota tanto delle robbe, quanto delli denari fatte
dal

dal Cancelliere in Castel Nuouo , e poi scesi à basso , che era l'Alba doue trouai detto Caponfacchi , & andassimo insieme à Porta S. Spirito fuori della quale staua vn Calese con due Caualli , e Verturino , e montati tutri due in Calese , ce ne venissimo alla volta di Roma con caminar notte , e giorno senza fermarci , se non tanto quanto si rinfrescauano , e murauano li Caualli sinche giungeffimo à Castel Nuouo doue arriuassimo all'Alba , e poi fossimo sopragiunti , com'hò raccontato di sopra à V.S. da mio marito con farci arrestare dalli Sbirri come sopra &c.

Io infra scritto Religioso Agostiniano Scalzo fò fede com'essendomi trouato all'assistenza della Signora Francesca Comparini dal primo istante del caso lagrimeuole , fino all'ultimi periodi della sua Vita , dico , & attesto con giuramento Sacerdotale alla presenza di quel Dio , che mi deue giudicare , come hò trouato , & ammirato à mia confusione in questa sia sempre benedetta figliola vna coscienza innocente , e Santa , & in quelli quattro giorni , che sopraiuette essendo da me esortata à perdonare , questa con lagrime à gl'occhi , e con voce placida , e compassioneuole rispondeua Giesù gli perdoni , che io di già con tutto il cuore l'hò fatto . Ma quello che è più d'ammirare si è , che sentendo gran dolore nella sua malattia , mai gl'hò vdito dire parola offensua , ò impatiente , ne tampoco sturbamento eterno , ne contro Iddio , ne il prossimo , ma sempre conformata alle Diuine disposizioni dicea Signore habbate misericordia di me , cosa inuero , che si rende incompossibile con vn' Anima , che non stia vnita à Dio , alla quale vnione non si giunge in vn solo istante , mà bensì con habito inueterato . Di più dico , che sempre l'hò vista moderatissima , e massime nell'occasione del medicarsi , che se in lei non ci fusse stato l'abito buono in quell'occasione non ha ueria abbadato à certe minuzzerie intorno alla modestia da me molto bene notate , & ammirate , à tal segno , che vna Zitella non saria potuta stare alla presenza di tant'huomini con quella modestia , e compositione con che staua quella benedetta figliola benche moribonda . E se si crede , che lo Spirito Santo quello , che fauella per bocca dell'Euangelista in quelle parole dette da S. Matteo nel cap.7. che Arbor mala non potest bonos fructus facere ; notando che dice non potest , e nõ , non facit , cioè mettendo impossibile ridurre la potenza ad atti di perfettione , quando l'istessa è imperfetta , & infetta da vizii , si deue dire che questa figliola era d'ogni bontà , e modestia , mentre con tutta facilità , e tutta esattezza facea atti virtuosi , e modesti anche nell'ultimo della vita . Di piu è morta con gran sentimento di Dio , con gran dispositione interna con tutti li Santi Sagramenti della Chiesa , e con ammirazione di

Num. 6.

Attestationes tam Religiosorum, quam aliorum omni exceptione maiorum, qui assistentiã præbuerunt Francisca: usque ad obitum super honestate, & declaratione ab ipsa emissa de nunquam violata fide Coniugali.

di tutti li circostanti Canonizandola per Santa . Non dico di più per non esser tacciato di parziale sò molto bene , che *solus Deus est scrutator Cordium* . Ma sò anche che *ex abundantia Cordis os loquitur* ; e che dice il mio gran S. Agostino , che *talis vita , finis ita* . Onde hauendo notato in questa sia sempre benedetta figliola parole Sante , opere virtuose , attioni modellissime , e morte da Anime di gran timor di Dio per scarico della mia coscienza sono necessitato , e non posso altro dire , che necessariamente bisogna , che sempre sia stata vna Giouane buona , modesta , & honorata &c. questo dì 10. Gennaro 1698.

Io Frà Celestino Angelo di S. Anna Agostiniano Scalzo
 affetmo quanto di sopra hò detto mano propria .

Alia attestatio , vt
 supra. Noi sottoscritti per la verità richiesti facciamo piena , & indubitata fede mediante il nostro giuramento , come in occasione , che ci siamo trouati presenti , e siamo assistiti all'ultima infermità della quale è morta Francesca Pompilia Moglie di Guido Franceschini , essendo la medesima stata più volte ricercata da Padri Spirituali , & altre persone , se haueua commesso mancamento alcuno al detto Guido suo Marito , per il quale gli hauesse dato occasione di maltrattarla nel modo , che si vedeua , e farla maltrattare à morte , la medesima sempre hà risposto , che non gl'hà in alcun tempo commesso mancamento alcuno , e sempre è vissuta con ogni castità , e pudicitia , e ciò noi lo sappiamo per esserci trouati presenti in detta infermità hauer'inteso tutte le dette richieste , e risposte in occasione anco d'hauerla medicata , & assistita , & hauerla sentita rispondere à dette richieste come sopra nelli quattro giorni, ch'è stata nelli patimenti delle ferite , & hauerlaben veduta , e sentita , e per hauer gli veduto fare vna morte da Santa . In fede habbiamo sottoscritta la presente attestazione di nostra propria mano in Roma questo dì 10. Gennaro 1698.

Io Nicolò Costantio &c. che assistito alla Cura della sudetta
 Francesca Pompilia per lo spazio di quattro giorni attesto
 quanto di sopra &c.

Io Fra Celestino Angelo di S. Anna Agostiniano Scalzo dico ,
 come mi sono trouato presente dal primo istante del caso fino
 alla fine della vita , & hò sempre assistito alla sudetta , la quale
 sempre diceua , che Dio li perdoni in Cielo , conforme io li
 perdono in terra , mà per la cosa , che m'oppongono , e mi as-
 fassinorono sono innocentissima à segno tale dicea , che Dio
 questo peccato non glielo perdonasse , perche non l'hauea fat-
 to , morì come vna Martire innocente in presenza d'vn' altro
 Reu. Sacerdote , con edificazione di tutti li circostanti , sicome
 sopra affermo mano propria

Io Sacerdote D. Placido Sardi affermo quanto hà detto il sopradetto Padre Fra Celestino trouandomi presente come sopra mano propria .

Io Marchese D. Nicolò Gregorij affermo come sopra mano propria .

Io infra scritto affermo quanto nella retroscritta fede si contiene, come anco l'attestazione del Reu. P. Celestino di Giesù , Maria , & hò assistita la retroscritta Signora Francesca Pompilia per il primo , hauendola raccolta da terra oue giaceua abbandonata di forze per causa delle ferite , & haueua la testa sù le gambe del Sig. Pietro Comparini già morto , e la medema si confesò nelle mie braccia al P. Rettore del Collegio Greco, perche non si poteua reggere , nè stare colca , e dall'ora non l'hò mai lasciata, mà sempre assistita sin' alla morte sua, che è stata la più esemplare Christiana, & edificante, ch'io mai habbia visto , hauendola sempre vista rassegnata nel Diuino volere, e sempre si confidaua nella sua innocenza &c.

Io Giuseppe d'Andilli mano propria .

Io infra scritto attesto , & affermo quanto in tutte dette fedi si contiene per hauer assistito à detta q. Francesca Pompilia &c.

Dionisio Godyn mano propria .

Io Luca Corsi affermo quanto in tutte dette attestationsi si contiene per hauer assistito giorno , e notte sino che è durata l'infermità di detta qu. Signora Francesca Pompilia , e sentito quanto sopra mano propria .

Io Gio: Battista Guitens Speciale, che hò assistito alli medicamenti , e cura della detta quondam Francesca Pompilia affermo quanto in tutte le sudette fedi , & attestationsi si contengono, per hauer continuamente in tutto il tempo notte , e giorno dell'infermità della medesima assistito uano propria .

Io Gio: Battista Mucha Giouine del sudetto Gio: Battista Guitens Speciale affermo quanto di sopra nelle dette attestationsi si contiene , per hauer assistito à detta-quondam Francesca Pompilia mano propria .

Si fa piena , & indubitata fede per me qui sottoscritto Abbate D. Liberato Barberito Dottore della S. Teologia , qualmente coll'esser stato chiamato ad assistete alla morte della q. Signora Francesca Pompilia Comparini, hò osseruato in più volte, e specialmente nel tempo d'vn intiera notte la nominata defonra con Christiana rassegnazione soffrire i dolori del suo male, e con soprahumana generosità condonare l'offese di chi con tante ferite l'haueua causato innocentemente la morte, anzi
per

per lo spazio della sudetta notte oseruai la tenerezza di coscienza della nominata , hauendola passata in addurmi quotidiani sentimenti d'vna eroica, e christiana perfezzione , tanto che posso attestare, che per la pratica io hò, essendo stato per quattro anni Vicario nella Cura della bo: me: di Monsignor Vescouo di Monopoli non hauer oseruato moribondi con simili sentimenti, tanto più con la condizione d'vn male così violentemente da altri causatoli , onde in fede , &c. Roma questo di 10. Gennaro 1698.

Io Abbate D. Liberato Barberito affermo quanto di sopra &c.

Illustriss. & Reuerendiss. D.

GVERNATORE

In Criminalibus:

**Romana Homicidij cum
qualitate.**

P R O

Fisco .

Summarium .

ROMÆ, Typis R. Cam. Apost. 1698.

Romana Excidij

Ill.^{me} & Reu.^{me} Dñe. **D**eploabile Excidium totius Familię de Comparinis sequutum in hac Alma Vrbe nocte diei secundę currentis mensis Ianuarij, & sanguis effusus clamat vindictam aduersus Delinquentes de terra apud Deum; Et nos, vt Munus, quo fungimur, adimpleamus operę pretium duximus hęc fidei calamo seriem facti recensere, ex qua Domini mei Iudices agnoscere facilius valeant, quęnam iura pro resolutione Causę, & poenę Delinquentium sint eidem facto applicabilia, iuxta monitum *Textus in leg. final. in princip. ff. de iureiuran.* & quia, vt ait *Barbosa axiom. iur. axiom. 93. num. 1.* sicut ex facto Ius oritur, ita ex facto Ius moritur.

Facti ideo series ita se habet, Guido Franceschinus de Ciuitate Aretij in Vxorem duxit Franciscam de Comparinis, cui pro Dote inter cętera promissa fuerunt nonnulla bona Fideicommissa subiecta a Petro, & Violante Iugalibus de Comparinis, qui eandem Franciscam vti filiam in domo educarunt, & vti talem etiam in Matrimonium collocarunt; Cũque prædicti Petrus, & Violantes nullos alios haberent filios, relicta habitatione Urbis ad habitandum in domo Franceschini sita in Ciuitate Aretij se contulerunt, vbi per aliquod temporis spatium insimul cohabitando in pace perseuerarunt; Sed vt sæpe accidere solet inter Amicos, & Coniunctos, ortę fuerunt contentiones, ac iurgia, ob quę præfatus Petrus, & Violantes a domo, & a Ciuitate Aretij recesserunt, & in Urbem reuersi fuerunt; Interim crescente flamma accensi odij, introducta fuit his super Dote promissa, & a Petro Comparino denegata, eo sub prætextu, quod Francisca verè non esset filia ab eodem Petro, & Violante genita, sed vti Partus suppositus fuerit recepta, ac educata, & quod proinde idem Guido, & Francisca ad successionem bonorum Fideicommissi aspirare nun possent; At licet super hoc Articulo Franceschinus fauorabilem reportauerit Sententiam, attamen cũ pro parte Petri Comparini fuerit ab ea appellatum, agnouit Francisca se malè in domo Viri ab eo tractatam, & ob id curauit a domo ipsius Viri recedere, prout cum auxilio, & societate Canonici Caponsacchi, vt supponitur, Affinis eiusdem Franceschini, fugam arripuit, sed habita per per eundem Franceschinum notitia de Vxoris fuga

A

fuga, illam insequens fuit assequutus in Cauponam Castrì Nonni, vbi adeundo Gubernatorem dicti Loci curauit committi capturam, & Vxorì, & Canonici, prout sequuta fuit; porro & que deinde querela introductum fuit Iudicium Criminale in hoc Tribunale Gubernij Vrbis in quo fabricato Processu, & auditis pluries, tam ore tenus, quàm in scriptis. Procuratoribus vtriusque Partis, resolutum fuit ob defectum probationis Adulterij dictum Canonicum relegandum in Ciuitate Verula, & dictam Franciscam in Conseruatorio retinendam; Verum quia pro parte de Comparinis prætendebatur subministracionem alimentorum in Conseruatorio ad Franceschinum spectare, & pro parte Franceschini dicebatur ad Comparinum pertinere, Illustrissimus, & Reuerendissimus Dominus Gubernator habito prius consensu Abbatis Pauli Germani fratris dicti Guidonis & Procuratoris in Causa, domum de Comparinis eidem Franciscæ pro tuto, & securo carcere sub sidiuisione assignauit.

Quibus controuersijs, tam in iudicio ciuili, quàm in criminali pendentibus, necnon super separatione Thori intentata pro parte dictæ Franciscæ vxoris, idem Franceschinus de prædictis vindictam sumere machinabatur, & pro eius prauæ voluntatis executione, coadunatis Dominico Gambassino Florentino, Alexandro Baldesco de Territorio Ciuitatis Castelli, Francisco Pasquini, Antonij de Marchionatu Montis Aguti, Blasio Agostinello de Ciuitate Plebis Incola Villæ Quaratæ, & eisdem accommodatis gladijs, & stylo per Bullam Alexandri Octaui prohibitis, ingressus fuit Vrbem in societatem prædictorum Hominum, & habito accessu ad domum de Comparinis hora prima noctis curauit sibi aperiri Ianuam sub simulatione deferendi epistolam Violanti transmissam à dicto Canonico Capo n' sacca in dicta Ciuitate Verula commorante, prout aperta Ianua habitationis per dictam Violantem, ipsam statim aggressi fuerunt, præfari Guido, & Socij à quibus cum gladijs prædictis fuerit iugulata statim occubuit, prout etiàm Petrus paritèr iugulatus ab hac vita migravit, Franciscæ verò curauit subtus lectum se abscondere, sed reperta, & pluribus vulneribus affecta, tunc, sic Deo permittente, non remansit extincta, licèt post paucos dies etiam ipsa decesserit, itaùt potuit hoc immane scelus reuelare; de quo habita notitia per Illustriss. D. meum Vrbis Gubernatorem peruigili attentione curauit, vt ab exequutoribus extrà Vrbem Malefactores insequerentur, prout eadem nocte reperti in Cauponà Merlucchiæ, cum armis igneis, & gladijs

dijs prohibitis etiam sanguinolentis, ductisque ad Carce-
res, & constructo contra eos Processu fuerunt super crimine
examinati, de quo aliqui ipsorum sunt confessi, alij verò
quamuis sint negatiui super tractatu, ac scientia de occiden-
do omnes de familia, attamen contrà eos, non solum vrgenti-
ssimæ præsumptiones, scientiæ, & tractatus prædicti, sed
etiam grauißima ex eodem Processu resultant inditia, itaüt
per DD. Defensores, minimè impignari, ac controuerti
possint,

Hinc cum hæc causa sit proponenda prò resolutione capienda,
credimus nullam subsistentem elici posse defensionem prò
parte Delinquentium, ad euadendam pœnam vltimi suppli-
cij quoad confessos de crimine, & ad eximendum negatiuos
à rigoroso vigiliæ tormento; Licèt enim quæstio sit valdè à
DD. agitata an maritus occidens vxorem adulteram non in-
continenti, ac in adulterio depræhensam, sed ex interuallo
à pœna ordinaria, *leg. Cornel. de Sicar.* excusari debeat, dùm
aliqui prò excusatione mariti affirmatiuam opinionem profi-
tentur, vt videre est apud *Giurb. conf. 86. Gizzarel. dec. 18. Mu-
ta dec Sicilia 61. Bertazzol. conf. crim. 206. & conf. 356. San-
felie. dec. 537. Pratus ad Paschal. de patr. potest. part. 3. c. 6. vers.
hinc Cabal. resol. crim. cas. 300.* qui omnes Doctores ad mi-
tigandam pœnam marito, qui ex interuallo vxorem occidit,
ea ratione mouentur, quia cum causa honoris semper cor-
præmat difficile est temperare iustum dolorem, ob quem in-
continenti dicitur facta honoris defensio cum comodè fieri
possit.

Alij verò quamplures negatiuam tuentur firmantes maritum
occidentem vxorem alitèr quàm in adulterio, & in actibus
Venereis depræhensam pœna ordinaria puniendum, ità *An-
gel. de Malefic. verbo, che hai adulterato la mia Donna nu. 1.
vers. multò minùs, Clar. in § homicidium num. 48. & §. fin.
quest. 89. in fin. Gomez. ad leg. Tauri 80. num. 68. Couar. in
epis. Iur. Canon. 2. p. cap. 7. § 7. num. 3. Farinacc. quest. 121.
nu. 111. & seqq. & in conf. 141. per tot. vbi contrijs responder
& D. Raynald. cap. 2. §. 4. num. 155. & cap. 7. in rubr. nu. 118.
& seqq. vbi hanc opinionem dicit vcriorem, & magis Reipu-
blicæ proficuam, nec ab ea in indicando recedendum esse
Sanz. de regim. Valentia cap. 8. §. 8. num. 63. & 64. vbi quod
apud illum Senatam pluries indicatum fuit non excusari ma-
ricum ex adulterio legitimè probato, si ex interuallo occi-*

dat vxorem, ea ratione, quia olim ex lege Romuli maritus vxorem occidere potuit, sed lex Iulia permisit tantum occidere adulterum vilem, vt probat *Anton. Matthæu de criminibus tit. 3. de adulter. cap. 3. num. 13.*

Attamen in hac nostra facti specie credimus versari extra difficultatem propositæ quæstionis.

Quia Doctores pro contraria opinione supracitati procedunt, & intelligi debent quoties agitur de marito, qui absque excessu legis, & nullis concurrentibus circumstantijs, & qualitatibus aggrauantibus, iustoque dolore tantum motus vxorem occidit, scelus autem, quando, vt in nostro casu adest excessus, & contemptus legis, ac concurrunt circumstantiæ, & qualitates aggrauantes, prout cum hac distinctione iuxta communem praxim esse procedendum testatur *Laurent. Matthæu de re crim. contr. 12. num. 29.* postquam firmauerit maritum esse excusandum à pœna ordinaria. & mitius esse puniendum, ita subiungit, *ex quibus praxis communis ea est, vt effectus doloris perpendatur, & solum puniatur excessus, ita ut si adest doli suspicio in forma occidendi, vt puta circumstantia tendens ad proditionem, pœna aggrauetur.*

Circumstantiæ verò aggrauantes, quæ in nostro casu concurrunt sunt plures, & adeò graves, vt quælibet ex ipsis est sufficiens ad pœnam vltimi supplicij imponendam, & ad reddendum crimen qualificatum.

Prima enim est coadunatio hominum Armatorum, pro qua secundum Bannimenta huius Gubernij Urbis imponitur pœna vitæ, & confiscationis Bonorum illi, qui est caput coadunationis, etiam si coadunati sint solum quatuor, vt legitur in *cap. 82.* eorundem Bannimentorum, quæ circumstantia, & qualitas eludj nequit auctoritate aliquorum Doctorum afferentium licitum esse Marito Vxorem occidere coadunatis etiam Hominibus, quia prædicti Doctores loquuntur, & intelligi debent in casu in quo licitum est impunè Marito occidere Adulterum, & Vxorem in actu Adulterij, vel in Domo ipsius Mariti, scelus autem ex interuallo, & extra Domum ipsius Mariti ad tradita per *Anton. de Ball. tract. var. delict. dispens. cas. 1. num. 65.* vel procedere fortè pessent, si alio modo non potuisset Adulterum, & Vxorem occidere, prout sentiunt omnes Doctores, qui possunt favore Mariti adduci, quod non est dicendum in casu isto, dùm Francischinus in sequendo Vxorem armis igneis munitus poterat vin-

vindictam sumere in Caupona Castri noui, vbi recursum habuit ad Iudicem, elegitque viam Iudicialem pro punitione vxoris, & Canonici cum quo illa aufugit; vel demum procederent si minorem numerum Hominum coadunasset, ob quod, crimen conuenticulæ non constitueretur; Fortius quia non agebatur de]committendo factum, vt diximus impunitabile, & à lege permissum.

Non enim credimus posse per Dominos Defensores prætendi, quod Maritus impunè occidere valeat Vxorem Adulteram, ex interuallo, dum omnes Doctores qui adduci possunt, fauore Mariti eximunt quidem ipsum à poena ordinaria non, autem ab extraordinaria, prout videri possunt adducti per nos supra in *S. Hinc cum Causa*; si ergò in casu nostro Maritus committit delictum punibile], quomodò potest coadunare numerum Hominum conuenticulam formantem, & à Bannimentis prohibitam, absque incurfu poenæ ab ipsis comminata?

Secunda qualitas, ac circumstantia est delatio armorum contra formam Constitutionis Alexandri VIII. quæ ad totum Ecclesiasticum Statum extenditur, ad cuius comminata, poenæ excusationem, minùs allegari possunt Doctorum auctoritates maritum excusantes, si cum Armis prohibitis occidat adulterum, & vxorem, quia ultra responsionem per Nos datam in explicatione primæ circumstantiæ coadunationis, ac conuenticulæ, quod illæ scilicèt procedant, & intelligi debeant in casu à lege permissio, & impunitabili, dicimus applicari minimè posse respectu Armorum de quibus agitur, dum d. Constitutio non solum prohibet delationem, sed etiam retentionem, fabricationem, & introductionem eorum in Urbem, & Statum Ecclesiasticum sub pœnis rebellionis, & Criminis lese Maiestatis, & quatenus etiam versaremur in casu à lege permissio intelligendæ essent Doctorum auctoritates de Armis, quorum prohibita est delatio, non autem retentio, & introductio sub quouis prætextu etiam Iustitiæ, vt habetur in eadem Constitutione *S. 1. ibi: Aut quo quouis etiã militiæ, aut executionis iustitiæ prætextu deferre, minusque in Domibus, aut alibi retinere: & in S. Ad hæc, prohibet etiã introductionem ibi: Retentionem Domi, in in Apotecis & alibi, introductionem in Statum Ecclesiasticum, fabricationem &c.*

Si ergò sub prætextu Iustitiæ prohibita est retentio, & introductio

ductio huiusmodi Armorum , si dicula esset pretenfio Franceschini , sibi licuisse , cum dictis Armis accedere ad urbem , & Domum vxoris ad vindicandam ex interuallo pretenfam honoris offensionem ; Certius quia delictum huiusmodi Armorum est graue , & de per se poena capitali puniatur , vt probauimus , quo casu secuto delicto ; si maior est poena asportationis , quam delicti , accipitur poena grauiori , quae leuiorem absorbet, *Bart.in l.numquamplura nu.4. ff. de priuat.delict.Glos.in l.qui de crimine, verbo plurima C. de Accusat.Cacye.latr.decif.18.num.2. & per tot.Cabal.caf.100.n.12. 13. & 14 Giurba conf.26.num.1.conf.82.nu.41. vt grauius puniatur delinquens,Cabal dicto casu num.13. & 14. Cartar.de pen.Innocent.art.2.num.101.Farinacc.qu.22.n.22. & qu.108.num.166.Sanfelic.deoif.43.num.2. & 3.* alijque quos allegat, & sequitur *Oril.ad Capan.resol.1.num.41.*

Tertia circumstantia est , quia Franceschinus cum Hominibus praedictis homicidia patrauit in Domo , ac habitatione propria de Coparinis,quod fit vt homicidium in Domo occisi commissum , dicatur qualificatum , cum Domus debeat esse tutum sui Domini refugium *l.plerique, & ibi Bart. & alij ff. de in ius vocan.Spad.conf.107.num.4.&* quia d.Francischinus ingressus fuit cum muratione vestimentorum , quo casu Homicidium dicitur commissum ex Insidijs *Farinac . qu. 126. cum alijs adductis per eundem Spad.loc.cit. num.5. praesertim de nocte, vt considerat Cabal.caf.31.num.15. quem allegat. & sequitur Spad.d.conf.107.n.6. & prius in conf.101.n.6.*

Quarta qualitas , & circumstantia est , quia dicta Francisca erat sub potestate Iudicis , dum fuit eidem , vt diximus in narratione facti , assignata Domus cum fideiussione de habendo illam pro tuto & securo Carcere , & sic erat in fortijs Curiae , vt volunt *Gramat.decif.14.num.4. & alij allegati per Farinac qu.30.nu.52. & 57. praesertim quando agitur fauore illius , qui in fortijs Curiae existit ; quidquid dici posset quando agitur de eius prauiudicio ; ideoque compertum est in Iure, nec minus Bannitum capitalem in Fortijs Curiae existentem occidi posse, Bart.in l.3.S.transfugas ff.ad l.Corn.de Sicar. & in l.illaqueum ff. de acquir. rer. dom. l. libertas ff. de Stat.Hom. Nell.de Bannit part.2.qu.28. cum alijs adductis per Oril. ad Campan.obseru.24.num.31.*

Sed cessare videtur omnis disceptatio , dum ex processu resultat dictum Francischinum accessisse ad Domum praedictam vna cum hominibus coadunatis non animo , & intentione

solum

solum occidendi Franciscam vxorem , sed etiam occidendi Petrum , & Violantem , quos vt ipse fatetur, odio graui prosequeretur , propter litem motam , & quia prædicti Iugales instarent apud Franciscam . vt mortem viro , & Cognato veneno pararet , ac etiam quia retinerent in Domo eius Vxorem , vt magis in continuatione adulterij eius honor offenderetur , quia vltra quod , vt supra dicimus Francisca fuit auctoritate Iudicis in dictam Domum reposita cum consensu fratris Germani eiusdem Mariti , non intrat quæstio an sit permissum à lege occidere Cõiunctos , Amicos , & Domesticos Vxoris adulteræ , etiam si Maritus illos suspectos haberet de permissione , vel assensu præstito Vxori adulterium committenti , cum specialia , ac priuilegia concessa Marito , aduersus Vxorem non sint multiplicanda , ac extendenda , sed strictè interpretanda *cap. non potest de præbendis in 6. cap. fin. de fil. p. asbyr. eod. lib.* quod procedit non solum quando agitur de præiudicio tertij , sed etiam si agatur de solo præiudicio Eisci per *Text. l. 1. in fin. ff. de Iur. Imm. & quod in præcis nostris terminis non debeat fieri extensio de persona ad personam ex Couar. de spons. p. 2 cap. 7. §. 7. & ex Angel. in verbo che hai adulterato n. 64. tenuit Antonius de Ball. d. tract. variar lib. 3. de litt. dispens. Cas. 1. nu. 63. & 64.* quamuis nos verius affirmare possimus huiusmodi assertionem dicti Franceschini esse calumniosè mendicantem , dum in articulo mortis eadem Francisca protestata fuit in damnationem Animæ suæ non offendisse honorem mariti cui potius attestationi credendum venit . cum moribundus non præsumatur immemor salutis æternæ ad *Text. in l. fin. C. ad l. Iul. repetund. cap. Sancimus 2. qu. 2.*

Cæteræ verò Causæ , quæ ab ipso Francischino adducuntur possunt quidem , quatenus veræ essent , demonstrare odium , ac inimicitiam inter ipsum , & dd. Iugales , vertentem , & sic ad probandam in eo causam præmeditatæ necis eorundem , non verò sufficientem ad ipsum excusandum à pœna ordinaria mortis , quàm omninò exigit homicidium præmediatum iuxta *Text. in l. 3. §. Patiatur Cod. de Episc. Aud. & in §. Lex Cornelia instit. de Publici Iudic. & in l. pen. §. Quia alias Personas ff. ad l. Pmp. de Pariciã. & in l. eiusdem in fin. ff. ad leg. Corn. de Sycar. & ex Genesi cap. 9. vers. 6. & Exod. cap. 21. [& Deuteron. cap. 19. vers. 13. per quæ Iura idem firmat Godofred. Abauoir prax Criminal §. homicida num. 4. & 5. Giurb. cons. Crimin. 2. num.*

2.num.38.& conf.63.num.2.Clar.qu.30.vers.Punctus est, Farinac. qu. 119.num.12.& seqq. ea ratio, ne, quia leges prohibent vindictam, priuatam hoc est illam, quam Carentes publico ministerio propter sua odia in interficiendis hominibus, vel aliter lædencis sibi vsurpant, vt habetur in leg. 14. Cod. de Iudic. & l. 38. §. 8. ff. ad leg. Iul. de Adulter. cum alijs Iuribus adductis per Dominum meum Raynaldum cap. 7. in Rubrica num. 122. & 123. ubi num. 24. subdit quod non solum in homicidio appensato imponenda est pœna ordinaria contrâ ipsum occisorem, sed etiam contrâ omnes alios, qui data opera, assistunt, & ad homicidium patrandum concurrunt opera, ope, vel consilio ex claro §. homicidium vers. aut verò sunt plures Farinac. qu. 96. num. 38. & seqq. conf. 138. num. 27. Cabal. res. sol. Crimin. 192. num. 1. & seqq.

*Franciscus de Gambis Fisci, &
Reuerendæ Cam. Apost. Procurator Generalis.*

Illustris. & Reuerendis. Domino

V R B I S

G V B E R N A T O R E

In Criminalibus.

Romana Excidij.

P R O

Fisco.

C O N T R A

D. Guidonem Francischinum,
& Socios.

Facti, & Iuris.

Domini Procuratoris Fiscalis Generalis.

Romæ, Typis Reu. Cam. Apost. 1698.

Romana Homicidij cum qualitate.

Ill.^{mc} & Reu.^{mc} Dñe. **Q**uoniam (vt auditum fuit) præcipua defensio

Domini Franceschini inquisiti consistit in prætenſa Cauſa honoris, ob quam motus fuerit ad delinquendum Fiſci propterea partes ſunt huius inſubſiſtentiam oſtendere, vt debita pœna plectatur adeo atrox, & enorme delictum.

Examineda itaque aſſumo fundamenta, quibus aſſerta honoris Cauſa inniti poteſt, fugam ſcilicet infelicis Vxoris à Domo Viri, vna cum Canonico Caponſacco, cum quo in Hoſpitio Caſtri Noui capta fuit, & prætenſas litteras amatorias in Proceſſu ſuper dicta fuga, & deuiatione inferas ex quibus prætenſa Vxoris inhoneſtas deſumitur cum alia cumulata in dicto proceſſu, ſint omninò læuia, vel æquiuoca, vel non ptobata, vt etiam colligi poteſt ex dimiſſione Francitæ Vxoris cum ſola cautione de habendo Domum pro Carcere, & D. Canonici cum triennali relegatione in Ciuitate Vetula, quæ vtrique oſtendit nullam fuiſſe à Fiſco in eodem Proceſſu acquiſitam legitimam probationem inhoneſtatis, & prætenſæ violationis fidei coniugalis, de qua fuerat per inquiſitum delata.

Et quidem ex deſenſionibus tunc factis, immò ex ipſo Proceſſu luculenter apparuit iuſtiſſima cauſa, ob quam infelix Puella mota fuit ad arripiendam fugam, à Domo Viri, vt ad proprios lares remearet, & apud Parentes quietam, & tutam vitam traderet. Notoriæ quippe ſunt altercationes ſtatim exortæ ob rei familiaris anguſtiam inter dictos miſerrimæ Puellæ Parentes, & Inquiſitum, cuiusque matrem, & fratres iſſdem fruſtra lugentibus ſe fuiſſe deceptos ſub ſpecie non inſimæ opulentiæ ob ſuppoſitum, annuum redditum ſcut. 1700. qui proſus inſubſiſtens detectus fuit adeo dum moram in Domo Sponſi inquisiti traxerunt in Ciuitate Aretij adeò malè ab ipſo cuiusque Conſanguineis habitum fuerint, vt poſt paucos meſes ab eadem recedere, ac ad Urbem redire coacti ſint totoque tempore, quo conuixerunt continè inter ipſos vigerint contentiones, & quærimoniæ, ob luſtum dolorem deceptionis, quam paſſi fuerant excitæ, vt conſtat ex Epistoſis Abbatis Pauli Franceschini eas præſupponentibus ad deſenſam ponderatis per D. Procuratorem Charitatis, & indicantibus malum animum, vsque tunc aduerſus infelices Parentes conceptum, & ſignanter in illa ſcripta 6. Martij ibi: *Torno à ſcriuere à V.S. che non voglio imitarlo nel modo di ſcriuere non eſſendo da par ſuo ſeminare certe parole nelle lettere, che meriterebbero riſpoſte di fatti, e non di parole, e queſte ſono offeſiue à ſegno, che le conſeruo per ſuo rimprovero, e mortificatione: & infra ibi: che ſe lei ci darà de guai (che non credo mai) non ne reſterebbe eſente ne pur lei: ſufficiens autem ex Epistoſis reſultat probatio, vt monent Gabriel tit. de confeſs. con. cluſ. 1.*

A

clus. 1. num. 54. Farinacc. conf. crim. 24. num. 21. Matth. Sanz. de re crim. contr. 28. num. 26. & seq. & contr. 77. num. 2. Sperell. decis. 69. num. 4.

Et licet ipse non parificent qualitatem altercationum, tamen, vltra quod aliquæ præferunt quærimonias adeò excreuisse, vt amaritudines in odium excreverent, vt constat ex Epistola sub die 12. Februarij 1694. *ibi: ma sentendo dall'vna, e l'altra parte crescere fra loro l'amarrezza per non dir gl'odij: facile fuisset Inquisito, & D. Abbati eius fratri exhibendo literas eidem scriptas, vt apparet ex tenore dictæ Edistolæ ibi: Io però che sento che il nemico di Dio habbia messe amarrezza tra loro, è conneneuole, che io adempisca con V.S. al debito di risposta: ostendere quærimonias fuisse iniustas, vel ab ipsis excitatas, quas cum non exhibuerint, vrget contra occultantem præsumptio veritatis earumdem, & istæ Causæ ob quam conquarebantur, & altercabantur, vt in similibus terminis firmavit Rota in Romana, seu Neapolitana liberationis à molestijs 27. Februarij 1690. §. eo magis coram Eminentissimo Cardinali Caccia, & in Romana Pecuniaria super exhibitione 21. Iunij 1694. §. clarius coram R. P. D. Muto. Quæ tamen specificatio pessimorum tractatum erga Parentes, quibus ex conuentione dotali subministranda erant alimenta habetur ex depositione Ancillæ data in *Summ. num. 1.* quæ vtique si legentium commiserationem extorquere apta est, multo magis credibile redditur ex huiusmodi pessimis tractationibus summopere exasperatum fuisse animum miserimæ sponsæ suos Parentes ita vexari frustra lugentis, imò etiam lugere impedita.*

Reditus ad Urbem eorumdem Parentum quantò, & quidem iustissimo dolore affecerit miserimam Puellam 15. ætatis annum non excedentem, omnibus notum esse potest; Ea quippe omni auxilio destituta, maritali seueritati exposita remanebat, ob quam se quotidie in vitæ discrimine constitutam timebat, & frustra tentato recurfu ad Reuerendissimum Episcopum, & D. Commissarium *Summ. num. 2.* frustra que interpositione nobilium virorum, qui prius etiam inutilis euaserat, vt constat ex dicta Epistola 6. Martij ibi: *Ma che rimedio posso darui io, quando tanti Cavalieri amoreuoli d' ambe le parti sento si siano framessi per comporli, e non li è sortito: Non aliud sibi remedium superesse purauerit, quam fugam arripiendi e domo Viri, & Patrios lares repetendi; Quæ propterea vt potè executioni demandata pro euadendo vitæ discrimine, nullum inhonestatis, & violatæ coniugalis fidei præbere valet indicium, cum ad causam omnino licitam potius quam ad criminofam sit referenda, vt per *Text. in cap. in pœnis de regul. iur. in 6. monent Honded. conf. 105. num. 60. lib. 1. Crauet. consil. 8. num. 2. & conf. 319. num. 1. Andreol. contr. 66. num. 24. Mascard. de probat. conclus. 814. num. 3. vol. 2. Conciol. allegat. 87. num. 24.**

Vrgente etiam alia Causa ob quam Patrios lares repetere studuit, Paternæ, scilicet infirmitatis, de qua in epistola, in qua insinuauit non

non expectandam esse societatem D. Gregorij Quilichini sese
etiam circa hoc remittendo D. Canonico, vnde bene inferri pō-
test, quod ex causis licitis de fuga agebatur.

Nullatenus verò fidendum est Epistolæ ab eadem Sponsa conscri-
ptæ D. Abbati Franceschino, in qua illi gratias agit quod ipsam
Matrimonio iunxerit cum inquisito eius fratre, ac profiteatur,
quod post Genitorum discessum omninò tranquillam vitam
ducebat cessante illorum peruersa ledutione, quæ ipsam à Viro
alienam reddebat, & deregit pessimum consilium ipsi traditum
totam Domum perdendi. Ipsa siquidem Sponsa ingenuè in suo
constituto fatetur eam conscripsisse, vt Inquisito obtemperaret
eo designante Apices, ipsaque calamum super inducente, vt ex
particula constituti eivdem data in *Summario num. 3.* & tanè so-
la lectura dictæ Epistolæ talem inserit horrorem, vt incredibile
sit, quod infelix Puella, nisi metu per virum illatum coacta talia
scribere potuerit in perniciem, & detractionem priorum
Genitorum, ad quem effectum eadem datur in *Summario nu-
mero 4.*

Iustior etiam euasit timor ob quem mota fuit ad fugam capien-
dam infelix Puella ex mota per Patrem Inquisito lite supèr
nullitate constitutionis dotis, vtpote factæ ex falsa causa, quia
credebat eam filix promittere, qualem non esse agnouerat ex
reuelatione per Matrem facta, quod ad decipiendum Virum,
& arcendos eius Creditores partum supposuisset; Cum enim
omnia bona fuissent in dotem assignata, & quidem conspicui
valoris inspecta qualitate personarum mota super illis per Socer-
um controvertia vtique grauissima, & Capitalis exorta timeti
poterat inimicitia per quam coniugalis pax, iam diù præceden-
tibus altercationibus turbata, recrudescens odijs, prorsus
eliminata remaneret. Hunc enim effectum parere lites super
considerabili quantitate, multoque magis super toto asse mo-
tas quotidiana experientia docet, & tradunt *Gramaticus conf. 46.
num. 4. Crauett. consil. 75. num. 11. Soccin. Lun. conf. 73. num. 14. vo-
lum. 2. Decian. tract. Criminal. lib. 3. cap. 25. num. 56. & 57. Ver-
migliol. consil. 321. num. 5. Farinac. quest. 49. num. 2.*

Adeoque cum iustus timor consideretur pensatis per prudentem
Iudicem circumstantijs Personarum, & temporis, vt ex *Text.
in l. metus autem causa ff. ex quibus caus. maior Glos. in cap. Pen.
de his, qua cui metusu. Caus. mouent Faris. consil. 53. num. 60. lib. 4.
Menoch. de arbitr. cas. 135. num. 2. Mascard. de probat. concl. 1051.
num. 21. Cartar. decis. Criminal. 72. num. 75. optimè Mogolon. de
metu cap. 2. §. 7. num. 1., & cap. 7. num. 1. vers. tum quia; Af-
firmandum omninò in casu nostro est eas tales reputandas, vt
non modo Puella teneræ ætatis, qualis erat infelix Sponsa
omni auxilio destituta, & exposita seueritati Viri, quæ illam
igneo breuiori sclopulo appetierat mortem ipsi uminando ob
leuissimam suspicionem, sed quæuis constantissima semina se*

in continuo vitæ discrimine constitutam suspicari posset, sibi-
 que præcauendi necessitatem agnosceret, quod si quæcumque
 Causa etiam opinata sufficeret ad illam excusandam, vt per
Text. in l. habitatores §. final. ff. locat. firmat Mogolon. de metu
cap. 7. num. 1. Farinac. quest. 125. num. 63. & 64. & num. 196.
D. Canon. Raynald. in syntax. rer. crimin. tom. 3. cap. 25. §. 4. nu. 34.
 vbi quod sufficit videre signa, & actus manifestæ voluntatis,
 vel præparamenta. Quantò magis excusabilis, & commiseratione
 digna censi debet dum ideò vrgens, & vndique verificata
 concurrat Causa, ob quam ad fugiendum mora fuit, vt
 aduertit *d. Mogolon. tit. 2. §. 6.* Vbi quod solus visus armorum,
 licet habens eis non vtatur, neque ea euaginet est iuxta causa
 metus productiua.

Nec inhonestatis, & violatæ coniugalis fidei præsumptio insurge-
 re valet ex societate D. Canonici Capontacchi, cum quo fugam
 arripuit, ob quam ipse fuit ad triennem telegationem in Ci-
 uitate Vetula damnatus. Cum enim, vt dictum est, infelix
 Puella esset omni auxilio destituta, propriæque ætatis, sui que
 sexus, & status ratio non pateretur, vt sola, vel in societate ali-
 cuius vilis mulierculæ periculoso itineri se committeret, ne
 domestica discrimina fugiendo, incautè se grauioribus pericu-
 lis exponeret, prout contingere potuisset, si per virum sola
 fuisset in itinere deprehensa, nec alium tutiorem inuenire po-
 tuerit Comitum, quam ipsum D. Canonicum amicitia coniu-
 ctum cum D. Canonico de Comitibus, qui licet familiaris, &
 consanguineus inquisiti eius statum magna commiseratione
 prosequeretur, tutius existimauit cum eo fugam arripere,
 quem prouidum, & aptum ad illam ad optatum exitum perdu-
 cendam censuit, quam aliter illam exequi cum maiori discrimi-
 mine; Quæ propterea necessitas, & prudens electio minoris
 mali omnem præsentis inhonestatis suspicionem excludit, vt
 tradunt *Bald. in l. fiiium num. 1. ff. de his, qui sunt sui vel alien. iur.*
& in l. 1. num. 35. C. de ijs, qui accus. non poss. Menoch. de præsump.
lib. 6. præsumpt. 54. num. 22. & 23. de arbitr. lib. 2. cas. 89.
num. 23.

Eaque vltèrius exclusa remanent ex modo, quo fuga fuit execu-
 tionì demandata iter ad Urbem arripiendo recto tramite, &
 cum maxima celeritate. Si enim expendendæ libidinis causa
 cum eodem Canonico Amasio (vt alias fuit eidem obiectum,
 & modo forsan animosius ad affectandam honoris Causam re-
 petetur) infelix Puella fugam arripuisset, vel moram traxisset
 in aliquo loco extra publicam viam in quo per inquisitum
 deprehendi non posset, vel non accessisset cum tanta celeritate
 ad Urbem, nisi verè id peregisset Patrios lares repetitura, in
 qua vitæ, atque honoris securitatem assequi sperabat. Nimis
 quippe imprudens fuisset Amasij consilium traducendi Vxo-
 rem à Domo Viri ad locum, quo suam cupiditatem explere
 non

non posset, quæ sola inuerisimilitudo sufficeret ad ostendendam veritatem Causæ per Vxorem in constitutis adductæ, quod pro vitando Vitæ discrimine in quo se constitutam timebat fugam atripuit, vt ad Patrios lares se conferret opem præbente, & associante Canonico ex mera commiseratione, & omninò salua honestate; verisimilitudo siquidem semper est potissimè spectanda ad arguendum delictum, vel illud excludendum, vt tradunt *Farinac. de fals. & simul. quest. 153. num. 176. & seqq. & conf. 60. num. 28. & 31. Caball. resol. crimin. casu 199. num. 35. Conciol. resol. crimin. 27. num. 2. & seq. Vermigliol. conf. 31. num. 5, & conf. 266. num. 10.*

Minusque subsistit alterum fundamentum assertæ Causæ honoris, quod alias fuit per inquisitum constitutum super prætensis literis amatorijs, quæ per miserriam Puellam scriptæ prætendebantur Canonico, necnon ex quibusdam ab eo scriptis, reperiis in Latrina Hospitij Castri noui in quam præiectæ asserebantur ad illas occultandas; Ultra responsiones quippe tunc traditas per D. Procuratorem Charitatis, non probatæ identitatis characteris, & incertitudinis, cum non appareant, cui sint directæ, quæ forsan admittæ fuerunt cum nulla pœna fuerit eidem Puellæ irrogata, & simpliciter dimissa sit cum cautione de habendo Domum pro Carcere, quamuis inspecto eorum tenore, præferre videantur, nimix beneuolentiæ significationem, tamen ea potuit per eandem fingi ad alliciendum D. Canonicum reluctantem, vt ipsa fatetur in suo constituto ad eî auxilium præbendum in executione præmeditatæ fugæ ipsam ad Urbem associando, constat enim Epistolas fuisse ad hunc finem exaratas *Summ. num. 5.* Adeoque commiseratione digna existimari debet miserriima Puella omni auxilio destituta, & in discrimine vitæ posita, si blandis, & forsan amatorijs verbis allidere tentauit D. Canonicum, quem aptum credebat ad ei opem ferendam, nec ex dd. Epistolis ad eundem fugæ finem conscriptis maius violatæ pudicitæ sumi valet argumentum, quam ex ipsa fuga; nec nouum est castissimas fœminas similibus artibus quandoque vt ad licitum finem vt in sacris paginis, fecisse legimus luditta ad decipiendum Holofernem, vt patriam liberaret. Id igitur facere potuit infelix Puella, vt mortis periculum euaderet absque vlla inhonestatis nota.

Accedente præsertim confidentia, quod habebat, tum propriæ continentix, tum integritatis eiusdem D. Canonici de qua deponit Testis de auditu à D. Gregorio Guillichino pariter confanguineo, (vt mihi supponitur) inquisiti in dicto Proc. per Fiscum ad instantiam inquisiti tunc aderentis examinatus ibi: *Il Signor Gregorio all' hora mi soggiunse il Signor Canonico vi vâ per buon fine, e perche ella se ne vorrebbe andare à Roma, e mi disse anche, che non ci poteua nascere del male, perche frâ loro non v'era male alcuno:* cuius profectò Testis depositio contra inducentem plenè

probat, vt tradunt *Farinac. conf. 120. num. 10. Vermigl. conf. 500. num. 3. D. Canon. Raynald. tom. 2. cap. 23. §. 4. num. 26. fol. 112.* Ac propterea cum nihil mali posset dicta infelix Puella suspicari à societate dicti D. Canonici, nec aliud remedium aptius haberet, vt suam præmeditationem exqueretur, tractatus habitus cum eodem per Epistolas excusandus est, vt potè ad hunc finem ordinarius, quamuis aliqua in illis legantur verba amatoria, quæ potius officiosa, & ad captandam beneuolentiam apposita censeri debent, & semper explicanda sunt iuxta intentionem proferentis, vt ex *Text. in cap. intelligentia, & cap. propterea de verbor. signific. monent Surd. consil. 431. num. 35. cum alijs relat. per Molin. de rit. nupt. lib. 3. quæst. 85. num. 50.*

Accedentè insuper participatione D. Canonici de Comitibus nobilis viri, & affinis D. Inquisiti, & hunc tractatum promouentis, quem incredibile non est illius honori insidiari voluisse, sed tantùm ex causa commiserationis infelicem Puellam ab imminente mortis periculo eripere; Talis autem participatio clucet ex ipsis epistolis, quæ ab illo conscriptæ prætenduntur.

Leuioris ponderis sunt alia prætensæ inhonestatis indicia desumpta ex accessu D. Canonici ad domum Inquisiti nocturno tempore ad effectum alloquendi cum vxore occisa, deosculatio eiusdem in itinere, de qua deponit Franciscus Ioannes de Rubris Chisi, vulgò *Calesse Ducor*, & prætensa condormitio in eodem lecto in hospitio Castri Noui. Ultra defectum siquidem probationis respectu primi, vt potè resultantis ex dicto vnici tantùm Testis Mariæ Margaritæ de Contentis, quæ patitur releuantissimam exceptionem publici metetrici, & tanquam vnica nihil probat, vt respectu meretriciæ qualitatis monet *Text. in l. 2. §. lege Iulia, ibique Glos verbo palam ff. de testibus Marfil. consil. 102. num. 9. Vermigliol. consil. 408. num. 1. Croz. de Test. part. 3. num. 46. Paris. consil. 67. num. 80. lib. 3. Mascard. de probationibus conclus. 1362. num. 20.* Et respectu vnicitatis, *Textus in cap. veniens, & cap. licet vniuersis de Test. Farinac. de Test. quæst. 64. n. 28. & 33. Vermigl. consil. 146. num. 3. D. Canonicus Raynaldus in Sintass. rer. crimiu. tom. 1. cap. 1. §. 10. num. 118.* Cum talis accessus esset ordinatus ad licitum finem subtrahendi miseram Puellam ab imminente mortis periculo, eam ad patrios lates ducendo non est trahendus ad iudicium illiciti commercij, cum sola possibilitas ad hunc effectum sufficiat, vt in bonam partem sit sumendus, vt per *Text. in l. merito ff. pro soc. tradunt Menoch. consil. 84. num. 75. Surd. decis. 58. num. 4. Vermigliol. conf. 171. num. 27. & consil. 397. num. 11. Rota decis. 106. num. 7. par. 2. diuers.*

Maximè cum ipse Testis de tali accessu deponens referat de auditu à dicto D. Gregorio Guillichino, quod erat ad bonum finem, & quod nihil mali intercedebat inter D. Canonicum, & occisam, qui cum esset melius informatus, vt potè amicus, & confan-

(anguineus Inquisiti (vt mihi supponitur) omnem contrariam suspicionem excludit; cui depositioni consonare videtur alia ipsius D. Canonici Franceschini fratris Inquisiti, qui interrogatus an sciret inter D. Canonicum Caponlacchium, & sponsam vlla familiaritas intercederet, respondit -- *Questo non haueuamo mai saputo per l'innanzi, mà seguito il ratto la Città dice, che frà essi vi passasse assolutamente qualche corrispondenz.* -- quæ ignorantia prorsus excludit, & inuerisimiles reddit furruos, & illicitos accessus D. Canonici ad domum, cum enim Inquisitus sponsam occidere minatus esset ob iniustam suspicionem de illo conceptam credibile est, quod tam ipse, quàm frater, omnesque domestici omni studio inuigilauerint pro eius custodia, itaut ipsis innotuisset dictus accessus si verè, vt supponitur, frequens fuisset, & ad malum finem ordinatus.

Eodemque defectu probationis laborat prætenfa mutua deosculatio in itinere, de qua deponit Testis vnicus, cuius animositas ex eius assertione detegitur, dum id vidisse assertur nocturno tempore non reddita scientiæ causa, quod, scilicet, tunc Luna luceret, vel alio artificiali lumine, tenebras noctis depellente, id videre potuerit, qua ratione non reddita, fidem non meretur, vt aduertunt *Bursatt. consil. 34. num. 6. Farinac. de Test. quest. 66. num. 38 Giurb. consil. crimin. 37. num. 41. Polidor. Rip. in tract. de noct. temp. cap. 57. num. 7. & seq. Vermigliol. consil. 74. nu. 1. D. Canonicus Rainald. tom. 1. cap. 11. §. 8. ad 13. num. 8. fol. 591. Addita insuper maxima inuerisimilitudine, quod dum Christum ducebat, & quidem ea velocitate, vt potius volare, quàm velociter progredi videretur, retrospicere potuerit, & mutuam deoscultationem videre, quæ pariter inuerisimilitudo fidem illi adimit, iuxtà ea quæ tradunt *Farinac. consil. 192. num. 60. in fin. Vermigliol. consil. 20. num. 24. & consil. 74. num. 4.**

Omniemque prætenfæ inhonestatis suspicionem excludere apta est assertio eiusdem miserimæ Puellæ facta in articulo mortis post plura lætalia vulnera eidem illata ad requisitionem Religiosarum personarum, & aliarum ipsi ministrantium, quod nunquam defecerat fidei coniugali, semperque cum omni castitate, & pudicitia se gesserat, vt ex iurata attestacione, ibi -- *Come in occasione, che ci siamo trouati presenti, e siamo assistiti all'ultima infirmità della quale è morta Francesca Pompilia moglie di Guido Franceschini, essendo la medema stata più volte ricercata da Padri spirituali, & altre persone, se haueua commesso mancamento alcuno al detto Guido suo marito, per il quale gl'hauesse dato occasione di maltrattarla nel modo, che si vedeuu, e farla maltrattare a morte, la medema sempre hà risposto, che non hà in alcun tempo commesso mancamento alcuno, e sempre è vissuta con ogni castità, e pudicitia; Et magis præcisè de hac constanti assertione deponit Fr. Cælestinus Angelus à S. Anna Ordinis Discalceatorum S. Augustini in dicta attestacione subscriptus ibi - *la qual sempre diceua, che Dio gli perdoni in Cielo,**

con.

conforme iagli perdono in terra, ma per la causa che m'oppongono, sono innocentissima à segno tale, che dicena, che Dio di questo peccato non gli lo perdonasse, perche non l'hauena fatto-- Quæ tanè assertio in articulo mortis emissa omnem fidem meretur, cum nemo tunc mentiri præsumitur, vt tradunt *Natta consil. 537. num. 18. lib. 3. Calderiu. consil. 15. tit. de vsur. Menarh. de præsumpt. lib. 5. præsumpt. 5. num. 7. & seqq.* & in præcisus terminis suspecti de hæresi, quod huiusmodi suspicio tollatur si in articulo mortis dicat, & protestetur se vixisse, & velle mori, & credere secundum placita Sanctæ Romanæ Ecclesiæ, *Decian. tract. crimin lib. 5. tit. de defens. Reor. cap. 17. nu. 27.* vbi refert opinionem *Alberici in Rubric. C. de hæret. circa finem vers. ultimo nota*, assertentis ex hac protestatione facta coram Cardinalibus defensam fuisse memoriam Bonifacij Papæ, & ipsum Albericum ex ea defendisse Galeatium Vicecomitem Mediolani. Et maximè dum omnes præfati Testes conueniunt miserriam hanc Puellam obiisse cum maxima ædificatione adstantium, semperque gessisse actus Christianæ perfectionis, vt in dicta attestacione ibi— *e per hauerli veduta fare vna morte da Santa.* Et in alia dicti Patris Cælestini Angeli præteritæ vitæ innocentiam ex actibus ante obitum gestis arguentis, quæ omnes dantur in *Summar. num. 6.*

Cæterum quatenus etiam tam ex dicta fuga, quàm ex repertis literis, vt supponitur, & ipsarum verbalis tenor præseferre videtur amatoris aliquam de inhonestate vxoris potuisset inquisitus suspicionem concipere, quæ iustam illius iram prouocare voluisset; Nullatenus tamen excusabilis redditur adèò truculenta vindicta, post tantum temporis interuallum sumpra, nedum de ipsa miserriima vxore, sed de omninò incautis, & nil tale merentibus eius genitoribus, & cum adèò grauibus circumstantijs delictum extollentibus, quominus pœna vltimi supplicij plectendus non esset si illud fateretur. Quauis enim iustus dolor violatæ coniugalis fidei maritum adulteram vxorem occidentem pœnam temperare soleat, nam de totali impunitate amplius agendum non est post ademptam licentiam proprium honorem nece Adulteri, vel Adulteræ vindicandi, vt monent *Felin. in cap. si verò num. 3. de sentent. excommunic. Imola in l. quid ergo §. si hæres num. 4. ff. de legat. 1. Mantie. cons. 241. num. 18. in fin. lib. 1. Oldendorp. var. lect. ad Iur. Ciuil. interpretat. lib. de vsucap. tit. de adult. num. 1. in fin. pag. 295. Baccon. ad Treuul. volum. 2. disp. 32. thes. 6. litt. C. vers. idem conceditur pag. 1277. Cassad. Rittesch. ad Nouell. Iustinian. par. 12. cap. 5. num. 8. pag. 677. Matthias. Stephan. ad nouell. 177. num. 20. pag. 609. Attamen ad euitandam leg. Corneliæ de Sicarijs pœnam, eamque temperandam, seruari debent omnia requisita relat. per *Angel. de malefic. vers. che hai adulterato la mia Donna num. 8. & seqq.*, & per *Ioann. de Teitops in tract. de Iur. occiden. Præhens. in adult. par. 2. num. 43. & seqq.**

Præcipuum autem, & indispensabile requisitum est, quod Vxor sit

fit in adulterio deprehensa, vt per Text. in l. quod ait l. 233 ff. ad leg. Iul. de adulter. ibi: voluit enim ita demum hanc potestatem Patri competere, si in ipsa turpitudine filiam deprehendat labeo quoque probat, & Pomponius scribit in ipsis rebus venereis deprehensam occidi, & hoc est, quod Solon. & Drago dicunt explicat ibi Glos. vers. in ipsis rebus, & tradunt Bartol. alijque interpretes, Salicet. in l. Gracchus C. ad leg. Iul. de adult. Angel. de malefic. dicto vers. che hai adulterato la mia Donna num. 8. & 9. Gaball. resol. crimin. cas. 300. num. 22. 29., & 33. Matth. Sanz. de re criminal. contr. 11. num. 12. & seq. qui Text. licet loquatur de Patre, multo magis procedit in Marito, cuius ira facilius contra Vxorem accendi potest sinistra, & sæpè iniusta suspicione de ea concepta, & qui non semper bonum pro ea consilium capere solet, quod Patrem ex instinctu naturæ facere lex præsumit, vt monet Text. in l. nihil interest ff. eodem solum excusans Patrem si vna cum Adultero filiam occidat, vel lætalia vulnera eidem inferat.

Idque est adeò verum, vt non sufficiat Vxorem fuisse repertam in actibus remotis, vel præparatorijs ad adulterium, vt communiter firmant DD. & signanter Soccin. in cap. peruenit n. 365. cum duobus seqq. de Sent. excom. Blanc. de Iudic. num. 69. Decian. tract. crim. lib. 9. cap. 5. num. 15. Talosan. sintasm. Iur. lib. 36. cap. 6. num. 7. Laurent. Kirgheu. com. opin. cent. prima conclus. 5. vers. adulter. an probaretur circa medium Anton. Mart. in Comment. de crimin. ad lib. 48. ff. tit. 3. num. 16. affirmans Vlpian. verecundiæ Causa paucis, & significantibus verbis vsus esse quibus non nisi quintam amoris lineam intelligere possit Farinac. quest. 121. num. 42. circa med. vers. Credo voluerit Io: Teitops. de Iur. occid. præbens. in adulter. par. 2. num. 1. litt. I. cuius verba referre opportunum censeo cum illum D. Iudices forsan præmanibus non habeant sic itaque verba dicti Text. explicat ibi -- *Quæ utique arguunt non sufficere hic adulterij præludia, sed requiri obscenam membrorum Commixtionem &c.* & post relatas Doctorum Authoritates subdit -- *Idque clarius apparet ex verbis solonis relatis à Luciano. in Eunuchò ante finem ibi -- nisi ij mentiuntur, qui eum aiunt deprehensum in adulterio, & deinde reprobant opinionem Accursij asserentis sufficere adulterij præludia, & in s. secundo post relatum conciliationem, quod scilicet eius opinio intelligi debeat de præludijs proximis, ita suam explicat Sententiam ibi: Sed proximis, vel in casu capit. litteris 12. de præsumpt. vbi ex deprehensione solius, & nudi cum sola, & nuda in eodem lecto iacentis violenta, & certa fornicationis suspicio oritur ex qua Sententia diuortij promulgari possit. At tamen ne violentam quidem suspicionem hic sufficere luculentè ostendunt leges sub litt. 1. adducta neque enim hæc inuentio est vera in ipso actu Adulterij deprehensio, & ex causa civili in dicto cap. litteris ad plenam Adulterij probationem in Causa Criminali haud firmitè arguitur*

CUM

cum nemo ex suspicionibus damnari, nedum occidi queat lege absentem ff. de penis quin, & ista violenta suspicio non est indubitatum indicium ad probationem, quale in criminal. requiritur leg. final. C. de probationibus, sed immò fallax est quia talitèr inueniri potuissent sic agere, ut adulterarent, & tamen non adulterarint, ut loquuntur Granett. &c.

Solumque de pœna temperanda agendum esset, si D. Inquisitus in actu depræhensionis Vxoris fugitivæ in Ospicio Castri novicam cum D. Canonico illam associante occidisset, at cum neglecta vindicta facti maluerit eligere vindictam Iuris, utique non potuit illam ex intervallo interficere, ut per *Text. in l. quod ait lex §. final. ff. ad l. Iuliam de adult. firmantem non posse vindictam post diem differri* tradunt *Angel. de malefic. dicto vers. che ha adulterato la mia Donna num. 21. in fin. Farinac. qu. 124. num. 403.* asserens ita in praxi servari nè detur aditus se vlciscendi propria *Auth. & cons. 141. per tot., & signanter num. 9. & seq.*, ubi confutat *Bertalzol. cons. 42.* pacificantem casum depræhensionis in adulterio, & quod Vxor de illo conuicta sit itaut non valeat de eo dubitari, nec sit iniusta, vel nimis facilis suspicio Viri assignans validum differentiæ rationem, quia iustus dolor iram excitans, que viri mentem turbare solet verificatur in actuali depræhensione Vxoris in adulterio, & in actibus proximis non ex intervallo, quamvis iusta sit eius suspicio, adeoque leges Maritum excusantes ex Causa Iusti, & inconsulti doloris, ut in *l. græcus ad l. Iuliam de Adulter.* & in *l. nec in ea lege ff. eodem* extendi non possunt ad vindictam ex intervallo sumptam, quia tunc nec impetus doloris, nec inconsultus dolor verificatur, & sedato animo homicidium patratum dicitur. Quod si ad refrenandum impetum sævientis doloris, ne propria autoritate Maritus vindictam sumat non excusatur a pœna *legis Cornel. de Sicarijs* si Vxorem ex intervallo interficiat. quanto minus excusandus erit si electa via publicæ vindictæ per Carcerationem Vxoris, & præseni Amatijs longo interiecto temporis spatio eandem vna cum suis Genitoribus adeò immanitèr trucidauerit.

Accedit ad exasperandam pœnam, quod respectu infelicium Genitorum nulla suberat iusta Causa eos occidendi, nisi pro tali considerari velit *lis mota super rescissione Instrumenti Dotalis ob Detectum Partum suppositum*, quæ potius delictum extollit ad atrocissimum Crimen læsæ Maiestatis ob omnimodam securitatem, quàm Pontificia Maiestas litigantibus in Vrbe præbere voluit, ut ex nota Constitutione *Alex. VI. §. 2. in princ. ibi: Horrenda in umanitate detestandaque seuitia mortem sitientes aliorum: & in fine ibi: in Dignitate Maiestatis offensam Iurisdictionis, & authoritatis Apostolicæ læsionem: & §. 4. circa medium ibi: ac læsæ Maiestatis Criminis Sententias incurrant ipso facto: & post ibi: Sinque etiam in suis bonis omnibus a*

cun-

*cunctis perpetuò diffidati , nihilominus , & Banditi , ac infames ,
& inhabiles habeantur .*

**Plurimum quoque considerari mæretur qualitas adeò inhumanæ
necis in propria Domo patratæ , quæ debet esse vnicuique tu-
tissimum habitaculum , vt per *Text. in l. plerique ff. de in Ius vo-
cando,* & in *l. nemo 103. ff. de regul. Iur.* ibique *Petrus Faber, &
Euerard.* tradunt *Farinac. in fragment. Crimin. par. 1. vers. Domo
num. 130. Clar. in §. final. quasi. 10. Gabal. cas. 13. num. 10., & ele-
ganter Cicer. in Orat. pro Domo sua ibi: Quid est sanctius quid
omni religione munitius , quàm Domo vnus cuiusque Ciuium , hic
aræ , hic foci , hic dii penates , hic Sacræ Religionis Ceremonia con-
tinentur . Hoc perfugium est ita Sanctum omnibus , vt inde abripi
neminem , nefas sit : Multoque magis respectu miserimæ Vxo-
ris , quæ in illa detinebatur loco Carceris approbante quoque
Domino Abbate Francischino , adeour publica securitas viola-
ta dici debeat , & læsa Maiestas Principis cum eadem ratio ha-
beatur de vero , & formali Carcere , ac de assignato à Principe
firmant *Farinac. quæst. 30. num. 47. Villos. de figit. cap. 18. §. 3.
num. 3. & sequen. D. Canon. Raina d. in prax Crimin. tom. 1. cap. 3.
§. 2. ad 6. num. 146.****

Tandem est quoque consideranda qualitas Armorum prohibito-
rum cum quibus delictum fuit patratum , quæ de per se penam
mortis exposcit , quamuis ipsum Principale crimen esset mitius
puniendum , vt monent *Sanselic decis. 43 per tot. referens ita
fuisse iudicatum Capic. latr. decis. 78. num. 2. & per tot. & ibi
Adden. num. 2.*

Quare &c.

**Ioannes Baptista Bottinius Fisci , &
Cam. Apost. Aduoc.**

Illustriss. & Reuerendiss. D.
G V B E R N A T O R E

In Criminalibus:

**Romana Homicidij cum
qualitate.**

P R O

Fisco.

C O N T R A

**D. Guidum Francischinum,
& Socios.**

Iuris D. Aduocati Fiscalis.

ROMÆ, Typis R. Cam. Apost. 1698.

S V M M A R I V M .

Illustriſs. Sig. Padrone mio Collendiſſimo .

MI giunge la ſua fauorita lettera in data del dì 24. del ca-
duto, e ſpiacemi ſommamente l'agitazione, nella quale
mi accenna ritrouarſi per le maledicenze, che vanno diſſe-
minando per Roma li Signori Pietro Comparini, e ſua mo-
glie intorno à mali trattamenti, che dicono hauer riceuuti
nella di lei Caſa nel tempo, che ſono dimorati in Arezzo, e
ricercandomi ella di ſincera informatione, le replico con
tutta ingenuità eſſere li medemi ſtati trattati da tutta queſta
Nobiltà, & in ſua Caſa con tutto riſpetto, e decoro, e la cau-
ſa de primi diſturbj, che nacquero trà eſſi, e la Signora ſua
Madre, e Fratelli fù perche la Sig. Violante pochi giorni dop-
po giunraui preteſe dominar eſſa la Caſa, tener le Chiaui di
tutto, & eſcluderne affatto la Sig. Beatrice ſua Madre, al che
con ragione non hauendo voluto acconſentire veruno de
ſuoi Signori Fratelli, diede motiuo alle prime groſſezze, e
contefe domeſtiche; ſ'accrebero poi nell'oſſeruare, che il
Sig. Pietro ſudetto laſciata la pratica, e conuerſatione del-
le Perſone più qualificate di queſta Città, ſi vniua con i più
vili, e con eſſi loro ſi diede à frequentare giornalmente
quante bettole v'erano, il che caggionò à lui di ſcredito, &
à lor Signori poca reputazione. Di ſcandalo molto mag-
giore ſono ſtate più fughe, e ricorſi fatti dalla Sig. Spola lo-
ro figlia à Monſig. Veſcouo, non con altro motiuo, ſe non
che ne eſſa, ne li ſuoi Genitori voleuano più dimorare in
Arezzo, mà tornarſene à Roma. Sgridata però da queſto
prudentiſſimo Prelato, la rimandò ſempre à Caſa in Carroz-
za. Vero è però, che doppo eſſere partiti da queſta Città,
li Signori Comparini, la Sig. Spola ſi è diportata ſino ad ora
cò gran modeſtia, e ſauiezza, da che prende indizio ogn'vno,
che à ſimili exceſſi la pouera giouinetta foſſe ſtata indotta
da ſuoi Genitori, come ella ſe ne dichiara con tutti, dete-
ſtandone anche la memoria, onde ſi v'andò reſtituendo nel con-
cetto vniuerſale, e di queſte Dame, che haueuano tralaſcia-
to di trattarla. In vltimo li medemi Signori Comparini haue-
uan leuate tutte le gioiè alla Sig. Spola, che gli sforza à re-

Num. 1.

*Epistoſa Domini
Marzimedici
Gubernatoris
Aretini.*

A

ſi-

struirle . In somma sono tali, e tanti li scandali, che hanno dati nel decorso di più mesi , che vi sono dimorati a tutta la Città, che non gli ne scriuo che pochi, e l'accerto, che li Sig. suoi fratelli hanno hauuta con essi vna sofferenza da Martiri , si che vedendo Io, che erano venuti incorrigibili , e la fauola della Città , e che poteuano mettere in necessità li Signori suoi Fratelli di commettere verso di essi qualche eccesso per regola di buon gouerno, mi volta: à preualermi dell'autorità, che per sua gratia mi hà data S. A. S. col minacciarli di prigionia, e castighi se non si fossero corretti, doppo queste minaccie parendoli forse di meritargli, e che li potesse succedere, deliberarono ritornare à Roma , come fecero poco doppo, lasciando di loro in questa Città vn pessimo concetto ; del resto al presente in sua Casa vi è vna grandissima quiete, e la Sig. Sposa viue con sauezza esemplare , detestando il male esempio, che hà di se dato à queste Dame, confessando liberamente, che li veniua commandato da suoi Genitori, & à mio giuditio è stata la mano di Dio , che hà liberati lor Signori da ceruelli così torbidi . Questo è quanto posso delincarli del molto più , che vi farebbe da dirle ; si tranquilli dunque , e creda , che il discreditò è stato tutto loro , ne restandomi , che soggiungerle mi confermo con tutto l'animo .

Di V.S. Illustriss.

Arezzo 2. Agosto 1694.

Deuotiss. & Obligatiss. Seruitore
Vincenzo Marzi Medici .

Sig. Abb. Paolo Franceschini . Roma .

Num. 2.
Deposizio Francifex.

Raconterò à V.S. la Causa , per la quale Io sono fuggita dalla Casa di mio Marito, & è che essendo tre Anni sono stata maritata qui in Roma di mio Padre , e mia Madre al sodetto Franceschino, e doppo essere stata sposata al medemo, si trattenne in Roma per lo spatio di due mesi senza consumare il matrimonio , e passaro d. tempo, fui condotta assieme colli sodetti mio Padre , e mia Madre dal sodetto mio marito in Arezzo , perche nelli Capitoi matrimoniali si era conuenuto, che d. mio Padre , e mia Madre douessero venire ad habitare in Arezzo conforme fecero, e doppo essersi trattenuti colà

colà per lo spatio di quattro mesi se ne partirono , e se ne ritornorno in Roma per li mali trattamenti . che riceueuano , non solo da mio Marito , mà da gl'altri di sua Casa , & essendo lo restata in Arezzo doppo consumato il matrimonio passato quasi vn Anno , ne riuscendo grauida , cominciò d. mio Marito , & anco Beatrice sua Madre à voltarsi contro di me , perche non faceuo figlioli dicendo, che per causa mia si estingueua la sua Casa, e che non si poteua da me col tempo sperare successione, mentre effo mio Marito diceua d'auuantage di hauer sentito dire da mio Padre , che in occasione di certa infermità da Zitella mi haueua dati certi semi per medicamento, che questi forse impediua di far figlioli , e con questo motiuo lo veniuo continuamente ad esser maltrattata dal sodetto mio Marito, e Socera , benche io gli replicassi , che sopra questo non ci haueuo colpa , e continuauano tutta via à minacciarmi sulla vita, & andauano cercando ogni pretesto benche senza occasione per maltattarmi, e poi il medemo mio Marito cominciò à prendersi gelosia di me, e mi proibì, che non mi affacciaffe alla finestra , & lo per togliergli questa occasione non mi affacciauo mai, mà tâto non bastaua, perche vn giorno stando sopra la loggia, il medemo disse, che stauo à far l'amore la sù alto senza nominarmi cõ chi, & lo gli replicai, che questi erano pretesti, e dal luogo sodetto non si vedeua , che vna strada senza incontro di finestra delle Case, perche sopra staua d. loggia alli Tetti solamente, e perche poi il sodetto Canonico Caponsacchi con altri Giouani del Paese passauano auanti Casa nostra , e si fermauano a discorrere con certe Donnicciuole, che stanno in faccia il medemo mio Marito cominciò à borbottare contro di me, per causa , che d. Canonico passaua come sopra, benche Io non haueffi in ciò colpa alcuna , e tanto più gli crescè il sospetto, perche stando vna sera alla Comedia trà molte altre genti il Canonico Conti fratello del Marito di mia Cognata, mi tirò alcuni confetti, e mio Marito , che ci era ancor lui lì vicino se ne adombrò, mà non del Conti, mà del Caponsacchi, che staua à sedere à canto il sodetto Conti, mà poi perche d. Conti praticaua in Casa nostra come Parente , prese ombra anco del medemo, in modo tale, che accortami di ciò, quando poi veniuo d. Canonico Conti in casa nostra lo mi ritirauo in Camera , perche non haueffe à darmi maggior trauaglio ,

Litt. A.

Recenset minas ob Ze-
lothyriam viti de Ama-
tio .

mà mio Marito non si appagaua di ciò, mà diceua, che io lo faceuo ad arte, e che non gli si leuauano li sospetti, che haueua contro di me, e tornaua nuouamente à tribularmi per causa del Caponsacchi, in modo tale, che mi ero ridotta in disperatione, e non sapeuo come dire, e poi per togliergli anco quest'occasione passando vn giorno detto Caponsacchi auanti Casa gli parlai, e lo pregai à contentarsi di non passarci per leuar me da tanti guai, che riceueuo per questa causa da mio Marito, & esso mi soggiunse, che non sapeua donde esso mio Marito canasse tal motiuo, mentre esso passaua di là per altri affari, e che fualmente non gli si poteua impedire passare per strada, e benchè mi promettesse di non passarci, tanto continuò à passarci, mà Io non mi affacciauò alla finestra, e con tutto ciò il sodetto mio Marito non si mai quietaua, e continuaua à maltrattarmi, e minacciarmi sù la vita, e che voleua ammazzarmi, anzi quando fù la cosa della Comedia raccontata di sopra, tornati che fùssimo à Casa mi appuntò vna Pistola in petto dicendo - Oh Cristo chi mi tiene, che non ti steno qui, ammiri bene il Caponsacchi, se non vuoi, che ti facci così, e non ti ammazzi - anzi in principio delli strapazzi sodetti andai due volte da Monfig. Vescouo, perche hauesse rimediato in qualche forma, mà non serui à niente per la corrispondenza, che haueua colla Casa di mio Marito; Onde essendo Io in quella Città forastiera, ne sapendo in che modo liberarmi dalli pericoli, e strapazzi sodetti dubitando, che se non mi ammazzaua con armi, mi hauesse potuto auuelenare, pensai fugirmene, e venire in Roma da mio Padre, e Madre, mà non sapendo in che modo farmi, vn mese, fà in circa andai à confessarmi da vn P. di S. Agostino, che li diceuauo il Romano, e gli raccontai tutti li miei guai, pregandolo, che scriuesse in mio nome, *perche io non sò scriuere*, à mio Padre, con rappresentarli, ch'io ero disperata, e che ero necessitata partire da mio Marito, e venirmene da lui in Roma, mà non hebbi risposta, e così non sapendo à chi ricorrere per mettere in effecutione questa mia volontà, e pensando, che nessun del Paese, ò per Parentela, ò per amicitia di mio Marito non mi hauerebbe assistito, finalmente mi risolsi parlarne al d Caponsacchi, perche *sentiuo dire, che era buono risoluto*, conforme passando vn giorno auanti Casa mia in tempo, che mio Marito era fuori di Città, lo chiamai,

B

Peierat afferens nescire
scribere .

C

Faterur Amosii Pollen-
tiam, & Audaciam .

mai, e dalle scale gli parlai, con rappresentargli il pericolo, nel quale mi trouauo anco per causa sua, e che perciò lo pregauo à condurmi quà in Roma da mio Padre, e mia Madre, mà esso mi replicaua, che non voleua in conto alcuno ingerirsi in questa faccenda, perche sarebbe stato mal sentito da tutta la Città, tanto più, che esso era amico della casa di mio Marito, mà lo lo scongiurai tanto, e gli dissi, ch'era opera da Cristiano liberare dalla morte vna pouera Donna forastiera, in modo tale, che l'indussi à promettermi, che mi hauerebbe condotto come sopra, & all' hora mi disse, che hauerebbe fermato il Caleffe, e che quando fosse stato agguistato nel passare, che haueria fatto auanti Casa nostra, me ne hauerebbe dato il segno con farsi cadere il fazzoletto, mà essendoci passato il giorno seguente, che lo stauo alla Gelosia, non fece d. segno, & il giorno susseguente essendo ripassato come sopra ci parlai nueuamente, e mi dolsi con esso, che hauesse mancato alla parola datami, e lui si scusò, che non haueua trouato Caleffe in Arezzo, & io gli replicai, che in tutti i modi l'hauesse procurato anco di fuori, conforme promise di fare, e la Domenica vltima del mese passato ripassando auanti casa fece il segno col fazzoletto, come haueua detto, e così essendo andata à letto con mio marito la sera, & essendomi accorta, che la notte dormiua mi alzai da letto, mi vestij, e presi alcune robbicciuole di mio vso, vna scattola con molte bagattelle dentro, & alcuni denari, che non so quanti fossero da vn Sgrigno, che ce ne erano anche de miei proprij, conforme apparisce dalla nota tanto delle robbe, quanto delli denari fatta dal Cancelliero di Castelnouo, e poi scesi à basso, che era l'alba, doue trouai d. Caponsacchi, & andassimo assieme à Porta S. Spirito, fuori della quale staua vn Caleffe con due Caualli, e Vetturino, e montati tutti due in Caleffe ce ne venissimo alla volta di Roma con caminare notte, e giorno senza fermarci, se non tanto quanto si rinfrescauano, e mutauano li Caualli, sinche giungessimo à Castel nouo, doue arriuasimo all'alba, & iui poi fossimo sopraggiunti, conforme hò raccontato di sopra à V.S. da mio Marito.

Respondit. *d. Caponsacchi non Parente in conto alcuno à d. mio Marito, mà bensì amico.*

Respondit. *Il sodetto Caponsacchi prima del fatto, non mi hà*

D

Fatetur colloquium cfi Amasio.

E

Fatetur noua colloquia cum Amasio.

F

Mendacium circa Aduentum ad Castrum nouum.

G

Amasius non est affinis Viri.

H

Non mendacia quod non receperit litteras Amasii, & nesciat scribere.

I

Aliud mendacium quod non nesciat Epistolas Amasii.

K

Nescies scribere, eius Vir iacebat Epistolas.

L

Aliud mendacium circa Aduentum ad Cauponā Gauzi noui.

M

Non mendacia quod non cubauerit in Caupona Gauzi noui.

mandato alcuna lettera, perche io non sò leggere il manoscritto, e non sò scriuere.

Respondit. *Ne meno io prima del fatto sodetto hò mai mandato lettera di forte alcuna al d. Caponsacchi.*

Iterum constituta &c. Respondit &c. *Io mentre stauo in Arezzo scrissi ad istanza di mio Marito all'Abbate Franceschini mio Cognato qui in Roma, mà perche io non sapeuo scriuere, esso mio Marito faceua la lettera col toccalapis, e poi mi faceua ripassarci sopra colla penna, & inchiostro da me, e mi diceua, che suo fratello haueua gusto d'hauer qualche mia lettera, che fosse stata scritta da me, e questo fù due, ò tre volte.*

Respondit. *Se V.S. mi facessi vedere qualch'vna delle lettere da me scritte come sopra, e mandate all'Abbate Franceschini le riconoscerei benissimo.*

Et ostensa &c. & Inter- &c. Respondit. *Hò visto, e vedo benissimo questa lettera mostratami d'ordine di V. S. che comincia - Carissimo Sig. Cognato, sono con questa - e finisce - Francesca Comparini, ne Franceschini - Et hauendola offeruata mi pare, mà non posso attestare per verità, che sia vna delle lettere da me scritte nella conformità sodetta all'Abbate Franceschini mio Cognato &c. Et paucis interiectis &c.*

Interrogata &c Respondit. *Io non hò mai mandate lettere di forte alcuna per Maria sudetta à persona veruna.*

Respondit. *Io per la verità arriuai a Castel nouo al rosseggiar dell'Alba.*

Respondit. *Noi ci fermassimo nell'Osteria di Castel nouo per lo spatio di più di vn'hora, & in questo tempo ci trattenissimo in Sala di sopra, & post pauca &c.*

Interrogata Respondit. *Io non mi missi à dormire ne riposare nell'Ostaria di Castelnouo per quel tempo, che mi ci fermai come sopra.*

Respondit. *Sento, che V. S. mi dice, che la Corte pretende in oltre, che Io la notte dormissi nella sopradetta Ostaria di Castel nouo in vna Camera di sopra, nella quale dormisse anco il Canonico Caponsacchi, & Io dico, e rispondo, che niuno può dire questo per verità, perche io non riposai in conto alcuno in d. Ostaria, e mi ci fermai per il tempo da me detto di sopra &c.*

Ca-

Carissimo Sig. Cognato.

Sono con questa à riuerire V. S. e ringratiarla delle operationi Num. 3.
fatte per collocarmi in questa Casa, doue lontana dalli miei *Epistola Franci-*
Genitori viuo hora vna vita tranquilla, & vna salute perfetta *scæ ad Abbatem*
non hauendo li medesimi attorno, che mi contristauano *Francischinum.*
giorno, e notte con li peruersi loro comandamenti contro la
legge humana, e Diuina à non amare il Sig. Guido mio Ma-
rito, à fuggire di notte dal letto del medesimo, con farmeli
dire, che seco non ci haueuo genio, che non era mio Marito,
perche seco non hò figli, e con farmi fare in più volte le fu-
ghe al Vescouo senza veruna cagione, con farmeli dire, che
Io voleuo fare diuortio col Signor Guido, e per mettere vn
gran disordine in Casa, disse mia Madre al Vescouo, al Sig.
Guido, e poi per la Città, come il Sig. Canonico mio Co-
gnato mi haueua richiesto dell' Honore, cosa non mai pensa-
ta dal medesimo; Mi stimolauano di continuo à consigli lon-
tani dal Giusto, e dalla Pace, che si deue al Marito col la-
sciarmi nella loro Partenza per espresso comandamento di
obediienza ad ammazzare il Marito, e dare il veleno alli Co-
gnati, e Socera, ed incendiare la Casa, à rompere vasi, & al-
tro, acciò non paresse doppio partiti, che fossero stati loro ap-
presso il Mondo, che mi consigliauano à fare tante leggierez-
ze, & in fine della loro partenza mi lasciorno, che Io mi sce-
gliessi vn Giouane à mio genio, e che seco me ne fuggissi a
a Roma, e tante altre cose, che per rossore tralascio, hora, che
non hò chi mi solleui la mente, godo vna quiete di Paradi-
so, e conosco, che li mie Genitori mi guidauano per loro
pazzia al precipizio, onde riconoscendo li spropositi fatti
per comandamento delli miei Genitori, ne chiedo perdono
à Dio, à V. S. à tutto il mondo, volendo essere buona Cri-
stiana, e buona moglie del Sig. Guido mio, quale tante vol-
te mi sgridaua con maniera amorosa dicendomi, che vna
volta l'hauerei ringraziato delle ripprensioni mi faceua, e di
quelli cattiuu, che mi faceua conoscere, che mi dauano li
miei Genitori, e mi confermo. Atezzo 14. Giugno 94.

Affezionatiss. Serua, e Cognata.
Francesca Comparini ne Franceschini.

A 4

Fuori

Num. 4. *Foris* - Al Signor Abbate Paolo Franceschini. Roma.
Epistola Franciscas scripta Domino Abbate Franceschino. *Intus* verò. Carissimo Signor Cognato. Hò riceuuto il ventaglio donatomi da V.S., quale è stato di mia sodisfattione, l'hò gradito, e la ringratio, mi dispiace, che li miei Genitori lacerino senza ragione la nostra Casa, Io per me stò bene, e contenta, non hauendo hora chi mi fomenti al male, voglio bene à tutti di nostra casa col santo timor di Dio. In tanto si rida delle maledicenze delli miei Genitori, mi commandi, e la riuerisco di cuore. Arezzo 19. Luglio 1694.

Obligarissima Serua, e Cognata
 Francesca Comparini Franceschini.

Num. 5. *Examen D. Canonici Caponsacchi.* Io doueuo venire in Roma per accommodarmi, e lo confidai con il Canonico Gio: Battista Conti parente del Franceschini, che praticaua in Casa de medemi, stimo, che detta Francesca l'haueffe potuto sapere dal medesimo Canonico, se bene anco per la Città si discorreua della mia venuta in Roma, che doueua seguire vn pezzo fà, onde mi fù *vn giorno portata vna lettera* da vna tal Maria, che in quel tempo era Serua di detto Franceschini mandatami da detta Francesca, nella quale mi diceua, che haueua sentito la mia venuta in Roma, e perche suo Marito la voleua ammazzare, haueua risoluto di venire in Roma da suo Padre, e che non sapendo con chi confidarsi, mi richiedeua à volergli fare il seruitio accompagnarla come sopra, & io gli risposi, che non voleuo far questa cosa, ne mettermi à tal cimento, *che gli scrissi la risposta per l'istessa Serua*, che io non mi ricordo il tempo preciso, che mi mandasse la lettera sudetta, e doppo continuò à farmi la sudetta istanza con buttarli *alle volte dalla finestra, mentre io passauo auanti Casa sua qualche polizino*, con reiterarmi l'istanza sudetta, & io gli replicauo, *mandandogli la risposta per detta Serua*, dicendoli, che non voleuo ingerirmi in tal faccenda, e perche vltimamente mi buttò vn altro polizino dalla finestra, per quanto riseppe fù veduta da vn artegiana resfritrice in faccia, che non sò come si chiami, e questa lo riferì al Marito, perche la medema Serua essendo stata licentata, mi disse, che era stato rumore in Casa per la causa sudetta, e che la Sorella di detto Guido maritata in casa Conti haueua detto di più, che essa Serua mi haueua portata la lettera, e che perciò detto Guido disse, che voleua ammazzare la,
 Moglie

Moglie in tutti i modi doppo passato qualche tempo, e che anco si farebbe vendicato coatro di mè, & io con questo motiuo per liberarmi da qualche impegno, e pericolo, & anco per saluare dalla morte detta Francesca, mi risolsi di venirmene à Roma, & accompagnare la medema quà per condurla da suo Padre, e così vna sera, che non mi ricordo del tempo preciso, passando da Casa sua gli diedi vna lettera, che la tirò dalla finestra, ma con vna cordicella, colla quale l'auuisauo, che per liberarla dalla morte, io l'hauerei accompagnata come sopra, & essa vn'altra sera mi gettò dalla finestra vna lettera, con la quale mi rinouaua l'istanza sudetta, rappresentandomi, che il Marito tuttauia la minacciaua d'ammazzarla, che perciò hauerebbe riceuuto il fauore, che io gli diceuo di accompagnarla come sopra. & vltimamente la Domenica vltima del passato mese d'Aprile passando auanti Casa sua, e stando lei alla finestra, gli dissi, che haueuo fermato il Caleffe per la mattina seguente à bon' hora, e che l'hauerei aspettata alla porta di S. Clemente, conforme alle sett' hore in circa, venne sola alla porta sudetta, & entrati in Caleffe girassimo fuori le mura della Città per andare alla porta di S. Spirito, che vò verso Perugia, che il Caleffe era di Agostino Oste in Arezzo, che lo conduceua vn Vetturino detto per soprano *Venarino* Garzone di detto Agostino, che lo feci vscire la sera di Domenica all'Aue Maria dalla Città, e poi seguitassimo il viaggio senza pernottare in luogo alcuno, e ci fermauamo tanto, quanto bisognaua rinfrescare, e mutare li Caualli, sin che giungessimo il Martedì à sera vltimo del sudetto mese di Aprile in Castel nouo, e perche detta Francesca disse, che si sentiu alcuni dolori, e che non gli daua l'animo di seguitare il viaggio senza riposo, si buttò sopra al letto in vna Camera così vestita, & io parimente vestito mi posi sopra vn'altro letto, ch'era in detta Camera, con dire all'Oste, che doppo trè, ò quattr' hore ci hauesse auuisato per seguitare il viaggio, mà non ci auuisò, e sopragiunse in tanto il Marito di detta Francesca, e ci fece arrestare dalla Corte tutti due, e dilà poi fossimo condotti in Roma.

Let. D.

Respondit. Io non hò parlato in Arezzo à detta Francesca altre volte, se non quanto hò raccontato di sopra à V. S.

Respondit. Il Marito della detta Francesca non mi è parente in grado alcuno.

Let. E.

Amasius non est affinis D. Guido.

Re - nis.

A 5

Respondit . Io non hò professione alcuna , mà sono Canonico della Picue di S. Maria d'Arezzo, e sono semplicemente Soudiacono .

Respondit . Quando fui carcerato à Castel nouo furono trouati certi denari , e certi Anelli con altre robbe , conforme la nota fattane dalla Corte .

Respondit . Io non hò mai scritta alcuna lettera alla sudetta Francesca , se non quelle da me dette di sopra .

Respondit . Le lettere mandatemi come sopra da detta Francesca , furono da me abbrusciate in Arezzo .

Respondit . Benche nella Carcere di Castel nouo , doue io fui posto fosse fatta diligenza dalla Corte , & anco dal Marito di detta Francesca non vi fù ritrouato cos'alcuna .

Respondit . La sudetta Francesca nel partire d'Arezzo portò seco vn'Inuolto delli suoi habiti , & vna Scartola , nella quale disse , che vi fossero gioie , ma io non le viddi , & anco in vna pezzola con alcuni denari , che furono poi descritti in Castel nouo da quel Cancelliere .

Respondit . Non sò precisamente da chi fossero state scritte le lettere mandatemi da detta Francesca , mà io suppongo potessero esser state scritte da lei , mà non sò se sappia scriuere .

Respondit . A Castel nouo nell'Osteria , & in quella Camera, doue ci fermassimo , come dissi nell'altro mio esame , e che ci erano due letti , ne fù accomodato vno solo colle lenzuoli dal Cameriero dell'Oste , perche seruisse per la Signora Francesca , e nell'altro non ci feci mettere lenzuoli , perche io già non voleuo spogliarmi , se bene non si spogliò ne meno lei , conforme dissi nell'altro mio esame .

Respondit . Se io vedessi qualche lettera di quelle da me scritte alla Sig. Francesca sudetta le riconoscerei benissimo .

Respondit . Hò visto , e vedo benissimo queste due lettere , che stanno ligate in questo processo mostratemi d'ordine di V. S. che vna comincia , Adorata mia Signora , vorrei sapere , &c. e finisce , mi hà detto il Conti , & hauendola ben considerata , dico , che questa lettera non è stata da me scritta , benche il carattere della medema habbia qualche somiglianza al mio carattere , & hò anche veduta quest'altra lettera , che comincia , Amatissima mia Signora , Riceuo , &c. e finisce questa mia , & hauendola ben considerata , dico , che la medema non è sta-

ta

ta in conto alcuno da me scritta , non è mio Carattere , anzi non vi è ne anco somiglianza al detto mio Carattere in conto alcuno .

Respondit . Io non hò parlato in Arezzo alla Sig. Francesca , se non che tanto quanto gli parlauo dalla fenestra, conforme hò detto nell'altro mio esame .

Respondit . Io non hò mai riceute altre lettere dalla sudetta Sig. Francesca concernenti altra Causa , se non quella della fuga per venire à Roma , conforme hò detto negl'altri miei esami .

Respondit . Io resto marauigliato, che il Fisco habbia pretensione, che dalla sudetta Sig Francesca ananti seguiffe la di lei fuga mi fossero trasmesse più lettere Amoroſe, eſſendo la medema vna Giouine modesta , e queste cose farebbero ſtate fuori del proprio ſtato , e della ſua nascita , e però dico eſſere la ſudetta pretensione falſa , & inuſſistente .

Respondit . Io torno à dire à V. S. che nella Carcere in Caſtel nouo non fù trouato dalla Corte coſ'alcuna , e ſe V. S. mi dice , che foſſero trouate alcune lettere Amatorie, le quali poi pretende il Fisco , che ſiano quelle mandatemi dalla ſudetta Sig. Francesca , dico, e riſpondo , che non è vero niente .

Foris - All'Illuſtriſſimo Signore Oſſeruandiſſimo, il Sign. Paolo Franceschini - Roma .

Intus verò - Illuſtriſſimo Signore Oſſeruandiſſimo.

Vedo quanto piace à V.S. di ſignificarmi intorno alle controuerſie, che paſſano trà il Signor Guido ſuo fratello, & il Sign. Comparini, e non poſſo non compatirle per il diſturbo , che ne deriuà à V.S. in vn caſo coſì raro , e forſe ſenza eſempio . Fece qualche ricorſo à me la Signora ſua Cognata, ma ſi come il calor grande , che haueua con vna ſouerchia paſſione della madre, mi appaleſſo, che la figlia faceua queſto paſſo per pura inſtigazione, coſì procurauo di appiaceuolirla, penſando , che tolti i fomenti, ſi ridurrebbe al giuſto , potendo tanto più facilmente crederlo, quanto che la ſua tenera età , tanto diceua , e tanto reclamaua , quanto era forzata à farlo per il fomento della Madre, e perche non ſi eſaſperaffe anche queſta maggiormente , la feci accompagnare ben due volte à caſa dalla mia Carrozza . Haueuo qualche cognitione di ciò perche il Signor Senatore Marzi Medici , che preſiede al gouerno Laico in queſta Città per il Sereniſſimo Gran Duca ,
mi

Num. 6.
Epistoſta Reuerendiſſimi Epiſcopi Aretini .

mi haueua communicato il tutto , e non mi resta da soggiungere altro, se non rapportarmi à quanto il medemo sopra ciò gli hà sinceramente scritto, e bramando nuoue occasioni di seruirlo , mi confermo

Di V.S.

Arezzo 15. Settembre 1694.

Deuotissimo Seruitore
G.M. Vescouo d'Arezzo

Amato mio Signore .

Num. 7.
*Epistola Amato-
eia reciproca.
prima fol. 10.*

Non multiplico attestati per accreditarui il mio amore , perche à sufficienza n'è testimonio la mia resolutione , & il vostro merito . Il mio affetto non hà più freno &c. Di gratia la renda à chi glie ne porge .

Mio Signore .

2. 11 Li dico, che non prenda ammiratione, se la Signora Madre staua alla finestra, perche ammiraua à quello, che affettaua la canepa, e però V.S. ci puol passare senza paura . Io più à bell'agio li scriuerò delle belle cose &c. quando mi diranno niente , lo farò auuifato à V.S.

Adorato Mirtillo , Anima mia .

3. 12 La prego à perdonarmi , se io non vi mirauo , quando eri alli Cappuccini, perche io vedeuo, che tutte due mirauano , se io vi mirauo , e per questo io patij pene in non poter mirare il mio Sole ; ma mi vedeuo col mio core , nel quale vi tengo scolpito . Resto qual sono, e farò

V. deuota Seru. e fedele Amante
Amarilli.

Amato mio bene .

4. 13 Io riceuo la sua, quale mi dà molta pena &c. , che il geloso vedesse le lettere, le vidde, ma non le aprì, che erano strette insieme, e lui crese, che fussero altre carte, e non le prese in mano,

no . Questo lui lo dice, perche vorria, che voi vi adirassi con me &c. Poi voi mi dite, se io sono del medesimo pensiero, & io vi dico, che sì, che se voi non sete mutato, io sono pronta à fare quello, che io hò detto &c. Poi in circa, se si seguita à bere il vino rosso, vi dico di sì. Se voi sete del medesimo pensiero: Se poi sete pentito, io sono contenta di fare quello, che volete voi &c. resto quale sono

Fedele Amante .

13. 4.
19.

Amatissimo mio Signore.

Io non sò per qual causa non passò di quà hieri sera , che io mi feci alla finestra, e non viddi nessuno . Io mi leuai dalla finestra , perche vi era il Canonico mio Cognato; Mi leuai per andare all'altre finestre , acciò non mi vedesse &c. Ma voltaste in verso la porta , strada vostra amata , perche ci, è chi adorate Il Conti mi hà chiesto quelle ortae, che mi haue- te date &c. , però ditemi, se io le hò à dare, ò pure ritenerle care per me, e resto qual sono, e farò

Fedele, e fedelissima Amante
Amarilli .

Mi scordauo dirli, che la Signora Madre non hà più febre, e beue il vino, ma da se, pure è rosso, come il nostro , pure ditemi quello hò à fare , che io lo farò . Lasciauo di mandarui vn milione di baci, ma sò, che in questo modo non vi sono cari, e poco, se ve li dassi da me, ma quelli della Cantarina vi sono carissimi, ma vi dico, che sono auelenati &c. , e fate lo scrupoloso con l'altre, come hauete fatto con me, che con l'altre ne hauerete ragione ma con me non ne haueuiuo occasione &c.

Offeruandissimo Narciso .

Questa sera riceuo la sua, e mi dà gran consolatione il sentire, che non sete adirato &c. , non sò quando me la darà, ma se me la dà, la darò à voi . Il Geloso è di fuori, e ci farei ancor io, e tutti, ma perche la Signora Madre non troua vna Seruai &c. hanno detto, che ci vonno stare vn pezzo , perche voi mi uscite di mente per non vederui per vn pezzo; Ma chi si ama di

di buon cuore , si tiene à mente , così farò io , prego V. S. à perdonarmi, se mi stendo troppo per scriuere troppo spesso , rassegnandomi quale sono

Deuotissima Serua, e fedelissima
Amante resto.

Amatissimo mio Signore .

7. 16. Si puole immaginare con qual prescia io vi scrissi quelli due versi &c. M'incontrai col Signor Dottore, come al solito , mi disse doue io andauo, e per la strada mi disse, perche gl'hauuo scritto dispettosa , io gli dissi , che meritaua peggio , perche faceua fatti cattiuu, e buone parole, perche diceua di volerli bene, e poi lo vuole alla Souara, & altre &c. mi rispose che non ueniua da questo, ma per cagione di vn'altro Signore , che ci voleuo bene, più garbato di lui . Io gli dissi, che se non era garbato quanto lui, almeno più fedele &c. professandomi quale sempre fui fedele .

Mio adorato, e riuerito Signore.

8. 17 Sono con questa mia à scusarmi dell'errore , che hò commesso in sigillare quella lettera , che andaua à Roma &c. , dico à V.S. , che non mi hanno trouato nessuna lettera , perche io non le metto nella cassa , ma bensì le dò alle fiamme , & in quel tempo, che io le tengo, le tengo in seno , e questa non è scusa , perche lei faccia riflessione à vna mia , che vi dico , che gli dò luogo nel mio seno &c. in quanto, che vno di loro fosse alla gelosia, forse lo credo , però voi non fate gesto nessuno , quando sete sotto le finestre Io questa sera farò alla finestra, ò pure alla gelosia, e quando vi vedrò , mi farò alla finestra, ma bisogna, che stia auueduta, che lui non mi veda, che mi hà detto, che se mi vede vuol far tante cose , che non ne fece tante Enea Troiano . Io per non darli sospetto , non ci stò, mi professo

Deuotissima Serua.

Sospi-

Sospirato mio Bene .

Se il dire, che io non vi amo non è errore, per non conoscermi, 8. 9.
ma questo per non gradirmi, consentite mio caro, che io mi
sdegni con voi, perche ò mi riputate cieca, ò non mi ripu-
tate amabile. Non potete dire con verità, che io non vi ami;
ò potete dire con verità, che non si ama tanto, quanto io amo
voi. Miratemi ne' miei occhi, che reca meraviglia tersi dal-
le mie lacrime vi faranno fedelissimi specchi, scorgere e,
che il vostro volto è copiato, nella quale fè di lui abbozza-
ture nel Sole, che la vostra bianchezza nevicata in sito del-
la via lattea, che le gratie vi hanno regolato i mouimenti di
propria mano, che Venere nel formarui ha presa la misura
col proprio cinto delle vostre membra. Ah, che io vi amo,
in maniera, che da vn canto vorrei amarui sola nel Mondo,
perche mi pare poterui amare per tutti dal Latio centro.
Vorrei, che tutti vi amassero, perche vedesti, che posti tuc-
ci insieme non giungono all'amor di me sola. Il mio petto è
inuidiato da qualunque altra parte di me, quasi habile sia so-
lo ad amarui. Sono cose da non saperli vdire, sono cose da
rendere scusabile à qualunque altro, che non lo creda; Ma
voi bello crudele, che se vi vedete il volto composto di mira-
coli Angelici, non douete stimare menzogna, che si troui vn
core fabricato d'amorosi miracoli &c. vi lascio mille, e mil-
le baci.

Amato mio Bene.

Lascio andare li complimenti per non poter corrispondere al- 19. 10.
li suoi versi tanto galanti, tutto il contrario di quello, ch'io
merito.

Lei mi dice, che vuol sapere ciò, che è seguito in casa, io vi di-
co, che non vi è seguito niente per quanto mi posso auue-
dere, perche non mi hanno detto niente nessuno di loro.
Ma il Signor Guido mi par più tosto in bona con me, che al-
terato, e perciò non posso vedere, se sijno stizzati con me.
Mio Cognato ferri la porta, lo fa più volte &c. Se poi non
ci volete passare più, questo è vostro arbitrio, et io prende-
rò in piacere quelle pene, che vi sono grate, e perciò io vi
dico, che fate quello, che volete, che come l'oro nel foco, co-
si l'Amo-

sì l'Amore nel dolore si affina, posso ben dire, che patirò pena à non vederui, come ero solita &c., e dandoui vn' amorofo bacio, resto quale sempre fui suiscerarissima Amante. e fedelissima Serua.

Mi si era scordato auuifarui, che stò nella medema stanza di prima, e Giouedi fera andai à letto à due hore di notte, e perciò lei non mi senti entrar in Camera. Dissi alla Serua, che facesse li segni, che era restato di fare &c.

Sabato mattina tornò il Sig. Guido, e lei potrà passare la sera à quattr'hore, ò prima, che vedrà il lume in Camera &c.

Carissimo mio Bene.

11. 20. Riceuo la sua à me gratissima, come tutte l'altre mandatemi &c. Sento, che lei hà hauuto caro il Pastor Fido. Mà vorrei, che lei lo imitasse, & io imitarò vn' altra Vienna. Sento da lei, che vorrà venire à vederui alla Villa &c. che vorrei poter fare io, vi farei più volontieri per Sposo, che per Seruo. Lei mi dice, che il Conti non vuol portarui più lettere, vi fò sapere, che io li fò due vezzi, e mi abasta l'animo di fare, che ve le porti, perche io gli dico due buone parole, e lui s'incanta, e farrà quello che io vorrò. Mi dice, che li mandi la corda per la Gelosia, mà non mi dice la sera &c. Li faccio sapere, che il geloso è ito à Souara, s'io vi potessi parlare; mà il Confessore non vuole in conto nessuno, e per questo io non vi ci faccio venire, che hora non si apte più l'uscio di strada; mà potrete aprire quello della Rimessa &c. Mà quel Frate non vò, e non vole. La ringratio delli Baci, che m'inuiate; mà se me li dassuo da voi, gli hauerei cari, & io ve ne dò altri, e tanti milioni di quanti me ne date voi &c.

Fedelissima Amante.

Io non sò, che nome mi dare ò Vienna, ò Amarilli, ò Dorinda, ò Lilla, mà voglio dirmi Arianna, quale credo d'hauere à essere, voglio dirmi tale, se pure voi non sete vn Tesco, mà vn casto Giuseppe, ò vn caro Narciso, ò vn Ilago, ò Fedone; mà Adone fù pietoso con Venere, mà io non sono tale; mà bensì vna Medusa. onde merito &c. Se voi hauete letto il Tasso lo saprete chi fù questo &c.

Amato

Amato Idolo mio .

Sento le cose , che vi sono occorse , io non l'hò per male, mentre lei dice, che non si puol fare dormire mia Madre, mentre stà male , e non beue vino, e perciò non possa dormire . Puol essere , che in questi giorni guarisca , pure glie lo farò auuifato , &c. 12. 21.

Fedele Amante
Amarilli.

Adorato , riuerito , amato mio Core.

Mi confondo in tante lodi &c. mi scriua più spesso , che puole. 13. 22.
Circa il Dottore , lei m'offonde in dirmi , che io tornerò ad amar lui ; Vi dico, che se nascesse al Mondo vn Sole, non hò Cuore per altra Piaga; mà chi mal fà, mal pensa &c. In quanto à quello, che vuol sapere del *Vino*, vi dico, che è rosso per hora : mà più in quà non sò , come sarà ; mà ve lo farò auuifato , mandandoui mille, e mille, e mille, e milioni di baci , resto.

Questa sera venite ad vn' hora di notte, che vi voglio parlare, e toffite quando sete sotto la finestra . 14. 26.

Amarilli.

La Sgrana perche non poteua dire, come dite quì, che era di latte. che lei è nera più di mè, se fussi voi vi porria dire Auorio, come vi chiamo Io ; Auertite , che la sera non sia il Gelofo, e non io, però io toffirò, se non sentite toffire non vi mouete. Vi faccio sapere, che il Sig. Guido và fuora, ci starà più giorni; 16. 28.
Però la prego venire la sera quasi ad vn hora di notte, e come sete sotto la fenestra , toffite , e fermateui vn poco , acciò io non sbagli . Lui và fuori Lunedì mattina &c.

Carissimo , meritissimo mio Amore , mio Bene .

Rendo infinite gratie della Rosalinda &c. Vorrei sapere , che cenni mi fece per la via del Poggio &c. e non perche io voglia far proua del vostro Amore , che sò molto bene, che sete costante quanto mè , e però io non voglio far queste proue &c. fiche voi non potete dire, che io non vi voglia più bene, *perche tutto quello, che voleuo al Signor Guido è volto à voi, che lo meritate .* 17. 29.

Amarilli.

Ado-

Adorata mia Signora.

18. 30. *Lettera Amasij.* Vorrei sapere, se Domenica sera, cioè dimani à sera potete partire, perche se non si parte dimani à sera, Dio sà quando si potrà per la scarfezza de Caleffi, douendo Mercordi partire il Vescouo con trè Caleffi, perciò se potete *partire, subito* letta questa mia ritornate alla finestra, e gettatemi la medema per segno, acciò fermi vn Caleffe auanti, che sia fermato da qualchedun' altro, & io se fermerò il Caleffe dimani, nel passar di costì mi lascerò cadere la pezzuola vna sol volta; del resto poi dimani à sera io mi tratterò dalle due di notte fino à quanto bisognerà, e lei *subito*, che vede, che sono dormiti bene, mi aprirà, acciò gli possa dare aiuto à far li fagotti, e mettere assieme i denari, sopra il tutto *cerchi di metterne in tutti i Boccali, e lei non ne beua, e se per cattiuia disgratia la scopriessero, e la minacciaessero di morte, opra pure la porta, che, ò morirò con voi, ò vi liberarò dalle loro mani, e pregando il Signore Dio, che ci facci riuscire bene questo nostro disegno, mi ratifico per sempre vostro fedelissimo Seruitore, & Amante.*

Mircillo.

19. Che il Geloso si mostri rappacificato, e che habbi detto, che stiate alla finestra, è vn cattiuissimo segno, perche in questo modo vorrà scoprire cosa fare alla finestra, & à che fine ci stiate, perche mi hà detto il Conti, che hora è più geloso di prima, e che se viene in chiaro di nulla, si vuol vendicare con darci la morte, e che vol procurare di fare il simile à mè, e questo è quello, che successe, ci è seguita poi la rottura della corda.

Amatissima Signora.

20. Riceuo i suoi caratteri abondanti di quelle espressioni, (e seguitano parole amoroze.) Si compiaccia riceuermi nel suo seno, nel quale riposo tutti i miei affetti &c. Consegna alle ceneri questa mia.

Riuerito Signore.

*Alia lettera
Francisca.*

21. 32.

Spinta dall'affetto, che io porto à V.S. sono sforzata di contradire à quello gli mandai hier sera in quella lettera, che gli diceuo, che io non voleuo più dirle, che lei ci venisse, se non lo diceua lei, hora le dico, che vorrei, che lei ci venisse questa

sta sera all' hora di hier l'altra sera, perche io hò pensato, che le Torri non si mouono così à colpi leggieri, se lei ci vol venire, purchè non sia occasione, che lei manchi di parola à qualche sua amata Donna, ò pure gli sia d'incomodo, quale io non vorrei esser causa; però se ci vol venire, ripassi di qui subito, che lei l'hà letta &c.

Die Martis 24. Septembris 1697.

Num. 8.

Ioſeph Maria Caponſacchius de Aretio pro complicitate in fuga, & deuiatione Franciſcæ Comparinæ, & cognitione carnalis eiufdem relegatus per triennium in Ciuitate Verula. *Decretum Relegationis Amasj.*

Illustris. & Reuerendiss. Dño.
Vrbis.
G V B E R N A T O R E

In Criminalibus.

Romana Homicidiorum.

P R O

**D. Guidone Francischino, & Socijs
Carceratis.**

Summarium.

ROMÆ, Typis R. Cam. Apost. 1698.

Romana Homicidiorum.

Ill.^{me}, & Reu.^{me} Dñe. **C**onfessio D. Guidonis, & Sociorum super homicidijs Franciscæ vxoris, & Petri, ac Violantis de Comparinis soceri, & socrus tantum abest, quod Fisco opituletur ad exigendam poenam ordinariam, quin potius nobis mirificè fauceat pro exclusione illius poenæ, quia non amplius est ambigendum de causa homicidiorum, nempe honoris, quæ primò à Fisco controuertebatur ob concursum aliarum causarum, quamuis vel essent inefficaces, vel de directo lædentes honorem, vt infra illotis manibus non pertransibimus; nam confessio acceptanda est cum omnibus suis circumstantijs, nec ad supradictum effectum patitur scindi, *Menoch. de Arbitr. cas. 279. num. 6. & seq., Clar. S. fin. q. 55. num. 16. vers. forte posset, Gomez. var. resol. tom. 3. cap. 3. n. 26. post medium vers. vnum tamen est. Farinac. quest. 81. num. 157., Guazz. defens. 32. cap. 35. num. 1. vers. sed contrarium, & nu. 2., Sperell. decis. 64. num. 16. par. 1. & decis. 108. nu. 36., & decis. 136. uum. 27. par. 2.*

Quod pro certo sufficeret, vt mitius cum Eo, & Socijs ageretur, attento quod causa honoris est sufficientissima ad leniendam poenam, vt in alia probauimus, quod scilicet absque incurfu poenæ ultimi supplicij possit Maritus etiam ex interuallo obtruncare Vxorem Adulteram, quotiès adulterium probetur, vt Dominus meus Fiscus Aduocatus concedit in eius Respon- sione *§. Solamque suspicionem.*

Et in rei veritate adduximus in alia quamplurimas Supremo- rum Senatum Decisiones, quibus liquet fuisse minoratam poenam Maritis, qui etiam mediante Assassinio occidi fecerunt Coniuges, & viceuersa nulla affertur Decisio Fisco fauorabilis; Qualis sententia eò libentiùs amplectenda est, quia à maiori numero DD. canonizatur; Et licèt *Farinac.*, & Dominus meus *Raynaldus* contrariam sectari videantur; nihilominus *Farinac. in suis questionibus* nimis se dubium reddidit, vt in alia ostendi, & *in conf. 141.* nimis inconstantem se præbuit, dum *in conf. 66. num. 5.* contrarium probauit: Quamobrem de huiusmodi inconstantia admonitus se excusando asseruit *in d. conf. 141. sub num. 16.* Beatricem, pro qua scripse-

A

rat

Beatricem Cenci.

rat in *conf. 66.* fuisse capite obruncatam, quasi quod huius modi rigorosa sententia in practica seruetur, sed parcat mihi tam eximius Doctor, nimis incongruè respondit oblitus, quæ in fine *d. consilij 66.* scripta reliquerat, hoc est fuisse punitam Beatricem poena vltimi supplicij, non quia ex interuallo occidi mandauit insidiantem suo honori, sed quia eius exceptionem non probauit ibi-- *Prout, & idem firmitè sperabatur de sorore Beatrice si propositam excusationem probasset, prout non probauit.*

Dominus verò *Raynaldus*, cuius scripta, & verba veneror in *suis Obseruationibus Criminalibus cap. 2. §. 4. num. 156.* præterquam quod asserit ex benignitate Principis sperari posse remissionem saltem quoad poenam ordinariam, non decidit articulum afferendo *Gizzarell.*, & *Giurbam* firmantes debere, ex iustitia poenam minorari, sed se remittit ad ea, quæ scripsit *cap. 7. in Rubrica sub num. 60.* vbi tamen ex professo non examinat articulum homicidij admissi ex causa honoris, aliàs contraireret communi sententiæ Doctorum, & tot Decisionibus Supremorum Magistratum, hoc est Communi Tribunalium praxi, de qua etiam testatur *Clar. §. Homicidium sub n. 51.* ibi-- *Et hæc opinio seruatur in practica, prout in contingentiæ facti reperio iudicasse Curiam Neapolitanam.* Et de eadem praxi similiter testatur *Mattheu de re crimin. controuerf. 12. num. 29.*

Quamuis nobis sufficeret, vt dixi, quod *D. Guido* non sit legitime conuictus, vt eius confessio in totum sine diuisione acceptetur: Nihilominus ad abundantem adducimus plenas probationes *A dulterij* ex Processu fugæ resultantes, quas ne *Fiscus* daret manus victas impugnuare conatur, & *Achilles* suæ prætensionis est vnicum examen ad perpetuam rei memoriam in Processu non redactum, sed extrà vagans cuiusdam vilis mulierculæ olim famulæ in domo Inquisiti ab ipso, à *D. Canonico* eius fratre, & ab istorum matre percussionibus malè multatæ, nimis affectatè recensentis pessima tractamenta facta *Petro*, & *Violanti de Comparinis*, ac *Franciscæ* eorum filiæ, & vxori respectiuè, præcipuè circa victum, qua de causa *Petrus*, & *Violantes* fatiùs duxerint Romam reuerti, *Summar. Fisci num. 1.* quamuis *D. Guido* per Instrumentum se obligasset prædictis Coniugibus alimenta præstare; Et insupèr infertur necessariam fuisse fugam *Franciscæ*
minis

minis mortis affectæ, vt ex ea deduci nequeat praua voluntas violandi matrimoniale fœdus.

Sed si veritatem amamus res familiaris inquisiti non est adeò angusta, vt nedum ad frugaliter, sed etiam ad lautè viuendum non exuberasset, vt demonstrat furtum pecuniarium à Francisca in actu fugæ commissum, vt in *Processu fugæ fol. 5. 63. 92.*

Causa vera, & realis, quæ mouit Petrum, & vxorem ad regrediendum Romam ea infallibiliter fuit, quia mater D. Guidonis tolerare non potuit, quod prædicti Coniuges de Comparinis rem domesticam moderarentur, & ad eorum libitum, disponerent omnia ad gubernium domus spectantia, quod flagrantissimè, sed non minùs audacter cupiebant, & quia malè insuper ferebat Petrus reprehendi, quod relicta Nobilitum Conuersatione cum vilissimis assiduè non sine honestorum Virorum scandalo ad Cauponas se sociabat, & fortius, quia coactus fuit à Præside Ciuitatis carcerationis metu restituere iocalia, & gemmas eius filia ablatas, vt D. Guido in suo examine deposuit 96. & 97., & mirificè comprobatur ab epistola eiusdem Præsidis à nobis nuper producta, quam damus in *Summar. num. 1.*

Quibus ad stipulatur examen iudiciale eiusdem Francisca in fuga carcerata, in quo nullibi legitur fuisse malè tractatam, nec vnquam conquesta est de domus decantata paupertate, & nihilominus est valdè probabile, quod ad cohonestandam fugam deduxisset necessitatem rei domesticæ, & miseriam domus, si quam passa esset.

Non negamus ortas subindè fuisse contentiones inter Francisca, & Virum, & forsàn istum fuisse illi mortem minatum, sed ob aliam causam, vt scilicet inceptos illicitos amores à genitoribus suggestos desereret, & honestè, vt par erat, viveret, vt expressè legitur in eius depositione *Summar. nostro num. 2. litt. A.*

Hinc verificatur, quod ipsa Francisca in epistola scripta Domino Abbati Francischino ingenuè fatetur *Summario Fisci num. 4., & nostro num. 3.* quod scilicet eius genitores seminabant zizanas inter ipsos sponfos, & suadebant recursum ad Reuerendissimum Episcopum sub falso commento malorum tractamentorum, atque die, noctuque instigabant, vt virum, cognatum, & socrum veneno abigeret, domum combure-

ret, & quod horribilius est, captaret Amasium, in cuius societate Romam rediret, quemadmodum obedire in istorum pluribus non neglexit.

Et in alia Epistola eidem Abbati scripta, arque per nos exhibita, & data *Summario n. 4. ibi -- non hauendo hora chi mi fomen- ti al male.*

Inanis est responsio, quod singula elementa dictæ primæ Epistolæ fuerant prius designata per D. Guidonem, & deinde superinducto per eam calamo efformata, vt ipsa asserit *dicto Summario nostro num. 2. litt. K.* Ad quorum comprobationem nil aliud deducere valuit, quàm scribere nescire, *d. Summar. num. 2. litt. B. H. & K.*

Nam præterquam quod de mendacio apertissimè remanet conuicta ab eius suscriptione ab ipsa recognita in mandato procuræ in carceribus, vt in Processu fugæ *fol. 39.*, & ab alia suscriptione in capitulis matrimonialibus, de cuius veritate nefas est disceptari, tum quia adest subscriptio vnius ex Dominis Cardinalibus, tum etiam quia fuit recognitus pariter eius caracther ab eadem subscribente per rogatum Notarij, vt in copia relicta in Processu *fol. 132.*, & insuper conuincitur ab Ecclesiastico, cum quo fugam arripuit, asserente non semel nocturno tempore recepisse epistolas proiectas ab ea è fenestra, aliasque misas per famulam, cuius depositionem damus in *nostro Summario num. 5. litt. A. B. C. D.* quod verificatur à Teste Fiscali *fol. 108. ibi -- E tirò giù una carta, che benissimo la veddi, & il Signor Canonico la raccolse, e se ne andò:* præter epistolas, & schedas repertas in carcere Castri Noui, vbi ipsi reperiebantur, continentes mutuum amorem; Vnde impossibile redditur, quod illarum elementa pari formiter fuissent ab eius viro designata, nec docetur à quo fuerint scriptæ, proinde præsumendum est fuisse ab ipsa exartas, ne patefaceret amores vetitos, qui occultari summo studio debuissent: Et quæso subijciatur oculis prædicta epistola, & benè agnosceretur, an ad imitationem signorum fuerint atramento efformata elementa à scribere nesciente, vel potius ab experta manu mulieris.

Primordium veritatis dictæ epistolæ, de qua loquimur, deprehendimus ab eadem epistola Præsidis Aretij, *dicto nostro Summario num. 1.*, vbi habetur -- *di scandalo molto maggiore sono state le fughe, e ricorsi fatti dalla Signora Sposa loro figlia à Mon-*

Monsignor Vescovo, non con altro motiuo se non, che nè essa, nè li suoi Genitori voleuano dimorar più in Arezzo, mà tornarsene à Roma, sgridata però da questo prudentissimo Prelato, la rimandò sempre à casa in carrozza.

Idque similiter expressè desumitur ab alia epistola Reuerendissimi Episcopi, quæ datur in *Summario num.6. ibi-- e tanto reclamaua, quanto era forzata à farlo per il fomento della madre. Et paucis interiectis ibi: haueuo qualche cognitione di ciò, perchè il Signor Senatore Marzi Medici, che presiede al Governo Laico di questa Città per il Serenissimo Gran Duca mi haueua comunicato il tutto.*

Verificatur ulterius per aliam epistolam D. Bartholomæi Albergotti exaduerso producta, quæ datur in *Summario Partis num.2. in fine*, sed non integra; ibi enim habetur per Secretarium Reuerendissimi Episcopi fuisse exhortatos D. Guidonem, & eius matrem ibi: *Anon strapazzare la Signora Sposa dell'affronto fattoli, basta dopò tante bisticcie ricondusse la Signora Sposa à casa, & ella si è dichiarata di non volere stare assolutamente colla Signora Beatrice, nè col Signor Canonico Girolamo suo Cognato, & post pauca: Io supplico V.S. Illustrissima, e l'Illustrissima Signora Violante à volerui porre rimedio, con insinuare alla Signora Sposa una pace tranquilla per quiete di tutti, vt in fol.190. ter.*

Quod comprobatur ab epistola D. Abbatis exaduerso producta fol. 182. ibi: *Dal Signor Guido mio fratello gli sono state fatte diuerse offerte, non sono state accettate, e si pretende, che noi douiamo obligare la nostra Signora Madre, e Signor Canonico ad uscire di Casa; questo non sarà mai vero, se pure non seguisse d'amore, e d'accordo; mà io non ce li consiglierò.*

Et ab epistola D. Romani 188. à ter. ibi: *Hò saputo per qual causa fuggì da Monsignore, & è questa che non vuol stare colli Signori Canonico, e Beatrice &c. quæ verba in dicto Summario Fisci num.2. non adnotantur.*

Eccè igitur, quod Francisca non malè tractabatur, quamuis malè tractari mereretur ob affectatum, & indecentem recursum sine causa ad Reuerendissimum Episcopum, prout patet an ex malis tractamentis prædicti Coniuges de Comparinis discesserint ab Aretio, & Francisca aufugerit.

Restat modò, vt videamus cessantibus malis tractamentis, quam nam causam Francisca habuerit aufugiendi à domo vi-

ri, siue potius, an scandalosa fuerit eius fuga, quod non erit difficile agnoscere, si parumper immoremur in depositione eiusdem Franciscæ, & in litteris repertis in dicto carcere Castri Noui, quæ productæ per Fiscum in Processu, licet non fuerint recognite eius negligentia nobis officere nequit, nec idèd puto posse controuerti esse eiusdem characteris, si conferantur cum caractere certo mandati procuræ, ultra quod veluti continentes amores, & nomen ipsius Guidonis, nemo prudens censebit non fuisse ab eisdem scriptas.

Ex eius enim depositione depromitur fuisse sæpius obiurgatam ob eius sterilitatem, & fuisse minis mortis perterritam causa amorum cum dicto Ecclesiastico, vt dicto *Summar. n.2. litt. A.* nec fallebatur cautus vir, dum in dies crescebat amor, imò coniugalis affectus diminutus erga virum, augebatur erga Amasium; In dictis enim litteris, quæ dantur in *Summario num.7.* Ille Ecclesiasticus vocabatur *Amatus, Adoratus, Mirtilus, Anima mea, Amatissimus, Narcissus, Suspiratum bonum, Charissimum Idolum,* & subscribebatur -- *Fidelis Amans Amarilli,* & è conuerso ab Amasio vocabatur *Adorata mia Signora,* & in earum singulis exprimitur intensus amor, & amoris ardor, quo vexabatur infelix pro Amasio, vt videre est, nec sine pudore singulas expressiones amoris tenerrimas referrem, sed tantum vnã, vel alterã non omittam, vt ab vnique Leo dignoscatur, vt in epistola 17. ibi: *siche voi non potete più dire, che io non vi voglia bene, perche tutto quello, che voleua al Signor Guido è volto à voi, che lo meritate.* Et hæc forsàn est causa cur renuebat iacere cum viro, vt annuit dicta epistola dicti D. Albergotti ibi: *La Signora Sposa qui stò malinconica, e due sere dopò la partenza di lor Signori fece strepito grande, perche non voleua andare à dormire col Sig. Guido suo Consorte, il che mi dispiace assai: fol. 190.*

In prima Epistola, ibi -- *Il mia affetto non hà più freno --* In quarta -- *Io son pronta à far quello, che v'ho detto --* In decima -- *Prenderò in piacere quelle pene, che vi son grate; & longum esset, & nimiam nauseam afferret singula recensere; Malè enim ferebat castis moribus Aretij se conformare, asuetã liberiores vitam traducere, vt legitur in Epistolis Domini Abbatis Franceschini exaduerso productis fol. 179. tergo, ibi --* *Quelle occasioni, che siano state di amarezza trà V. S. & il Signor Guido io non le voglio esaminare, sò ben dire, che*

che se è proceduto per volere indirizzare alle costumanze della Patria la Signora Sposa, questo può, e deue farlo il Marito, si perche sopra la Moglie gli dà l'auttorità Dio, si come perche è pratico delle usanze, e tratti della Patria, che se V.S. & il Sig. Pietro ne lo impedissero farebbono male, & al Marito tocca auuertir la Moglie -- Et in alia fol. 124. ibi -- Ne mi posso persuadere, che li miei Madre, e fratelli si portino in forma tale, che oblighino à fare simili trascofacci -- Et post pauca, ibi -- Et apprendere, che quello da i miei si andaua insinuando alla Signora Francesca al Sig. Pietro, & à V.S. non era se non per puro zelo del decoro della Casa, e loro.

Viceuerſa in litteris dicti Ecclesiastici idem desumitur, vt in Epist. 20. ibi -- *Riceuo i suoi caratteri abundantissimi di quelle espressioni &c. si contenti riceuermi nel suo seno nel quale riposo tutti i miei affetti -- Et quæ pertinent ad fugam reddunt clariorem Probationem mutuae vicissitudinis, ut potè verificata ab effectu sequuto, vt in Epistola 18. ibi -- vorrei sapere se Domenica à sera, cioè domani à sera potete partire, perche se non si parte domani à sera, Dio sà quando si partirà per la scarsrezza de' Caleffi -- & paucis interpositis -- E lei subito che vede, che sono dormiti bene, mi aprirà, acciò gli possa dare aiuto à fare i sagotti, & à mettere assieme i danari -- Et post pauca -- Pregando il Signor Iddio, che ci facci riuscir bene questo nostro disegno.*

Et Epistola 19. eiusdem Amalij, qua dantur Amatae documenta non obscure etiam nos edocet cuius qualitatis essent Amores, ibi -- *Che il geloso si mostri rappacificato, e che habbi detto, che siate alla finestra, è un cattiuissimo segno, perche in questo modo vorrà scoprire cosa fate alla finestra, & à che fine ci state; Mi hà detto il &c. Che hora è più geloso di prima, e che se viene in chiaro di nulla, si vuol vendicare con darci la morte, e che vuol procurare di fare il simile à me.*

Comprobatur ulterius, quod iste miser Inquisitus deplorabiliter exclamat non vno tantum Amalio Arctij. fuisse contentam, sed à pluribus Procis coinquinatam, vt vituperia eius Domus multiplicaret fol. 98. tergo, Dum non obscure legitur in septima Epistola, ibi -- *Mi incontrai con il Signor Dottore, come al solito, mi disse doue andauo, e per la strada mi disse perche gl'haueuo scritto dispettosa, Io gli dissi, che meritaua peggio, perche faceva fatti cattiuu, e buone parole, perche diceua di voler mi bene, e poi lo vuole alla Souara, & altre, & in 13. ibi --*

eirea il Dottore lei m'offende con dirmi, che io tornerò ad amar lui, vi dico, che se nascesse al mondo un Sole, non hò cuore per altra piaga.

Pater igitur an honestam Causam Francisca habuerit diuertendi à Domo Viri siuè potius concitata fuerit à vehementibus amoris calcaribus; dicatur modò, quod ad bonum finem huiusmodi litteræ missæ fuerunt, vt alliceretur Ecclesiasticus ad eam associandam, vt euitaret mortis discrimen, in quo ex iniusta causa reperiebatur, & quod potuerit in Societate Amasij tutum seruare pudorem, dum pro certo amorosæ expressiones factæ in dd. Epistolis non præferunt castitate Animi, & pudicum affectum, & sanè deficiente causa iusta fugiendi, corruiit velamen, quo salacitas obumbrari prætendebatur. Fateor Iuditham castissimam Viduam decora facie, & vndiquè ornatam perrexisse ad hostem salacissimum, sed ad explendum pium opus ad liberandam scilicet Patriam non præmissis lasciuis litteris, sed orationibus seruentibus munitam, de cuius illibata pudicitia nefas fuit suspicari, cum imò afflatu Spiritus Sancti impulsa extiterit; Hodie verò per quam pauca inueniuntur Iudithæ, sed multiplicantur filiæ Loth, quæ si custodire proprium pudorem in commensalitate patris non valuerunt, imò ne sobrius negaret, quod impotenter efflagitabant, inebriarunt cum vino, vt alienatus ab eius mente inuoluntariè nefario incæstu pollueretur *Genes. cap. 29.* Credimus ne quod Puella, quæ Amore deperibat, quæ ardentissimè flagrabat societatem Cupidi Amantis, & Amati saluam habuerit honestatem in longa fuga? quam vtinam in Domo Viri seruasset!

Et sanè si iustum mærum ex iniusta Causa sibi illatum habuisset, non vtique ad augendum suspicionem prauæ, & libidinosa conuersationis in fuga dictum Ecclesiasticum assumpsisset Comitem, qui eius Viro suspectus erat, & qui nullo gradu consanguinitatis, seù affinitatis sibi, vel marito erat coniunctus, vt vterquè fatetur in *nostro Summario num. 2. litt. G. & num. 5. litt. E.* & sic, vt autenticaret inhonestatem, sed seruato Matronali decore, vel mediante opera Reuerendissimi Præfulis aliquod Monasterium fuisset ingressa, si veritate, non mendacijs vsa fuisset, vel habito recursum ad Præsidentem laicum, iste cunctis exploratis, aut tutum reditum ad Urbem honestis Viris, ac Mulieribus comitantibus præbuisset, vel penès honestam Matronam cum debitis cau-

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tionibus collocasset; aut quoties, de neutro confidisset, & statuisset ex se Romam reuerti saltem cum vno ex Attinentibus iter fuisset aggressa.

Prout labitur alia excusatio ad cohonestandum illicitum Amorem, quod de prædictis conscius erat alter Ecclesiasticus leuir Cognatæ dictæ Franciscæ, dum si benè percurrantur supradictæ Epistolæ summoperè augebitur suspicio illicitæ correspondentiæ cum illius complicitate, vt in Epistola 11. ibi -- *lei mi dice che il &c. non vuol portarci più lettere, vi sò sapere, che Io li sò due vezzi, e mi abbaſta l'animo, che ve le porti, perche Io gli dico due buone parole, e lui s'incanta, e farà quello, che Io vorrò* -- Et in Epistola 19. Amasij, ibi -- *Perche mi hà detto il &c. Che hora è più geloso di prima, e che se viene in chiaro di nulla s'vuol vendicare* -- An autem ex dictis verbis possimus desumere, quod casti essent amores inter ipsos, quia de prædictis erat Conscijs Alter Ecclesiasticus, quisque iudicet. Scio tamen, quod ad sibilum Amasij in societate d. Alterius Ecclesiastici se exponere Franciscam in fenestra non benè olebat, vt deponit in Processu fugæ Testis Fiscalis 107. tergo 108. proindè non sine Causa Dominus Guido suspicabatur etiam de dicto secundo Ecclesiastico, vt ipsa Francisca asseruit in sua depositione dicto Summ. nostro num. 2. antè litt. A.

His præhabitis, hoc est non constito, quod Francisca sine iusta, & legitima causa fuisset perculsa minis mortis, imò constito de suspectissima correspondentia cum Amasio, consequens erit, quod minæ proferebantur à Viro, vt honor eius seruaretur, & sic erat in potestate eiusdem Franciscæ se eximere à prædictis minis sine scandalo sine fuga, sine opprobrio, sed castè viuendo, sed ipsa nimis procliuus tintillo carnis omnia postposuerat, vt libidinem expleret, nullo habito respectu ad violandum fœdus coniugale, de cuius temeratione nimis incõgruum est dubitare, cū manifestè liqueat ex deductis in Processu, & signanter ex reciproco Amore inter Amasios, vt aduertit Rota dec. 95. n. 6. par. 2. diuersor., & ex litteris tam tenerrimas expressiones continentibus, *Antaran. in cap. Praterèa num. 3. & ibi Felin. num. 3. de Testibus, Paris. consi. 54. num. 64. lib. 4. Ryminald. Iun. consil. 274. num. 9. lib. 3. Mascard. de probat. conclus. 64. num. 10. in fine.*

Ingressus, vel egressus d. Ecclesiastici è Domo Franciscæ tem-

pore suspecto, de quo deponit Testis Fiscalis 107. tergo, ibi --
*Nel suono dell' Ave Maria essendo nella medema finestra vi ddi
 aprire l'uscio pianpiano di detti Signori Franceschini, dal quale
 uscì detto Signore &c. e succhiuse nel escire detto uscio, mà non
 lo chiuse affatto, e di là a poco detta Signora Francesca Pompilia
 con il lume in mano vidi, che chiuse detto uscio -- & comprobat-
 ur ab Epistola 11. ibi -- E per questo lo non vi faccio venire,
 che hora non s'apre l'uscio di strada, mà potrete aprire quello
 della Rimessa &c. de per se est validus probare Adulterium,
 quoties etiam ageretur ad irrogandam pœnam, Polidor. Rip.
 de noctur. tempor. cap. 36. num. 14., Farinac. quest. 136.
 num. 122.*

Proiectio eiusdem ad fenestram ad sibilum diù, noctuque, &
 nutus mutui, de quibus deponit d. Testis 108. sunt valdè ef-
 ficaces ad probandam copulam carnalem, Ancaran. in dicto
 cap. Præterea num. 3. & ibi Butr. num. 9. ad finem, Felin. post
 num. 13. de Testibus.

Modus quoad fugam se præpararunt continens, vt ita dicam,
 speciem Insidiarum, vt desumitur ex Epistola Ecclesiastici 18.
 ibi -- *Sopra il tutto cerchi di mettere in tutti i Bucali, e lei non
 ne beua --* qui quærendo opportunitatem miscendi somnife-
 ra perscrutabatur cuius coloris vinum in Domo biberetur,
 ne vt authumo, alteratus illius color medicamine admixto
 insidias proderet, vt in Epistola 4. ibi - *Poi incirca se si segui-
 ta à bere il vino rosso vi dico di sì --* In 12. -- *Mentre lei dice,
 che non si può far dormire mia Madre, mentre stà male, e non
 beue vino --* Et in Epistola 13. -- *In quanto a quello, che vuol
 sapere del vino vi dico, che è rosso per hora, mà più in quà non
 sò come sarà, mà ve lo farò sapere.*

Accedit quod dicta miserima afficiebatur Zelothypia dicti Ec-
 clesiastici, vt notatur in Epistolis 5. & 21. quæ non solet con-
 cipi, nisi ab Amantibus; Quo circa cum sit innegabilis amor
 carnalis inter ipsos reciprocus, non puto posse dubitari, quin
 discessus simultaneus à Domo Viri, & associatio per longum
 tramitem probent Adulterium, Farinac. dicta quest. 136.
 num. 182. & est Textus in leg. consensu S. Vir quoque Cod. de
 repudijs, ibi -- *Aut ipso inuito sunt iusta; & probabili causa foris
 scilicet pernoctantem.*

In progressu itineris oscula ad inuicem impicta, de quibus de-
 ponit Testis Fiscalis, quem ea vidisse de nocte in Processu
 non

non reperio, vt ex aduerso supponitur, sed fol. 100. asserit, ibi -- Solo viddi, che alle volte s' baciauano, & quæ tam anxie impingere Francisca desiderabat, eademquæ recipere, vt in Epistola 11. ibi -- *La ringratio dellibaci, che mi inuiate, ma se me li daffuo da voi l'hauerai cari, & io ve ne dò altre tanti milioni* -- Et in Epistola 10. ibi -- *E dandoui un'amoroso bacio* -- Et in 5. -- *Lasciauo di mandarui un milione di baci* -- & passim in alijs, reddunt Adulterium non ambiguum, adeout non desint asserentes, quod probato osculo, dicatur probatum Adulterium, *Clar.S. Adulterium num. 16. Laurent. Tennin. in pract. caut. bel. 6. num. 153.*

Quo circa nemo, ni fallor, tam vecors, & tam insipidæ mentis inueniri poterit, qui sciens, quæ recensuimus non firmiter credat, quod cum reperirentur in Cauponis in itinere, siue nocte ad quiescendum, siue mane ad se refocillandos pudor Matronalis non fuerit temeratus.

Sed profectò omnes prorsus tolluntur Ambages, dum omisso, quod ille Ecclesiasticus vestibus laycalibus inductus esset 4. 100. quod non leue momentum asserit ad probationem Adulterij *Matthau. de re crim. controu. 11. num. 31.* peruenerunt insimul ad Cauponam Castri noui sub hora prima noctis cum dimidio, vt tres Testes Fiscales concorditer deponunt 44. tergo 47. 49. Et licet in Mansionem duo lecta adessent, vnum tamen dumtaxat dictus Ecclesiasticus voluit aprari, & tota nocte clausis foribus solus cum sola quieuit (si quiescere possunt Amantes,) ex quo absque dubio probarum remanet Adulterium *cap. litteris de presumptionibus, Menoch. consil. 31. num. 25. vers. nec vera est, Hektor. Emil. de Testib. verb. Testis Adulterium num. 33. Farinacc. dicta quæst. 136. num. 170.* & alij passim vltra relatos in alia.

Qualis quippè probatio efficacior euadit à Mendacio Francisce asserentis peruenisse ad dictum Hospitium in Aurora, dicto *Summar. num. 2. litt. F. & L.* Si enim nil mali fuisset per actum, non vtique veritatem occultare tentasset, vt benè in proposito *Riminal. Lun d. conf. 274. num. 64. ad 67.*

Demùm sententia, seu Decretum Tribunalis, quod datur in *Summario num. 8.* vbi condemnatur dictus Ecclesiasticus pro cognitione carnali Francisce, remouet omne dubium, quia Adulterium reddit notorium, vt in alia probatum fuit. Et licet asseratur fuisse in mente Dominorum iudicum illud

moderare, & addere -- *pro præsenſa cognitione carnali* -- non tamen fuit moderatum, & nihilominus nihil obefſet, poſtquam ad aures infælicis mariti fuerat peruentum Adulterium vxoris manifeſtum, & notorium canonizatum ſcilicèt per Iudicis decretum.

Præſertim quia, & ſi ab eo præſcinderemus, adhuc ad effectum, de quo agitur, copula carnalis pluſquam ſufficienter probata remaneret, quia non agitur de inferenda pœna Adulteræ, ſed Adulterium excipiendo deducimus, vt aduertit *Matthæu. in præciſis terminis diſta controu. 11. num. 25.* & in fortioribus *Spad. conf. 83. in princip. lib. 1.* Eſt enim regulare, quod Adulterium præſumptionibus exhuberanter probetur ad effectum Ciuilem, ad ſeparationem ſcilicèt Thori, vel ad ammiſſionem Dotis, *Hoſtien. in cap. litteris poſt numerum 4. verb. Diuortij, & ibi Butrius num. 6. de præſumpt. Soccin. Iun. conf. 32. num. 9. in fine lib. 2. Ferrett. conf. 168. num. 4. Bertazzol. conf. crim. 20. num. 8.*

Nec releuat, quod aliquæ ex dictis vehementibus præſumptionibus probentur per Teſtes ſingulares, quia agimus de probanda Inhoneſtate, & Adulterio in genere, nec ad effectum condemnandi Adulteram, ſed ad deſenſam Inquiſiti, vt ſentit in puncto ſcribens *apud Sanſelic. deciſ. 337. num. 16. & 19. & ante eum Clar. S. final. quaſt. 53. num. 19. Farinacc. quaſt. 64. num. 223.*

Et ratio eſt euidentiffima, quia vt excuſetur maritus ab homicidio vxoris adulteræ ex interuallo, non requiritur exacta, adulterij probatio, ſed ſuperabundat vehemens adulterij ſuſpicio, vt decilum teſtatur *Sanſelic. diſta deciſ. 337. num. 13.* Nos autem verſamur in fortioribus, quia nedum habemus vehementes ſuſpiciones deductas per Teſtes ſingulares, ſed alias etiam exquisitè probatas, imò apertiffimas probationes per Fiſcum deductas.

Parum obſtante, quod Francisca prope mortem ſe exculpans, & Amadium, aſſeruerit nil mali interceſſiſſe inter ipſos, quia huiuſmodi excuſatio nimis affectata ſuffragaretur, quoties antecedenter ſocium inculpaffet, & nullo alio indicio eius inculpato ſuffulta eſſet, & hæc iuaret ſocium non ipſam. At poſtquam de matrimoniali fide fracta ex ſupradictis probationibus conuiſta remanet, abſurdum eſſet, quod excuſatio

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tio facta, vt honesta mori videretur tantæ esset efficaciz, vt probationes suæ turpitudinis abolere posset *Marfil. in pract. S. restat num. 12. & 16. in fine Bursatt. conf. 201. num. 14. Rimin. iun. conf. 410. num. 17. Farinacc. quest. 46. num. 72.*, & quod horribilius est, vt ex dicta exculpatione occisor grauius puniretur.

Credo, & sperare iuuat eius animam in loco sempiternæ salutis esse positam, mediante Diuino auxilio, dum tempus habuit detestari antea actum vitam, sed nullus cordatus homo laudare poterit eius Testamentariam dispositionem, in qua eius filium vix natum, & ideò innocentem Patri occultatum solum, vt audio in legitima, & extraneum nullo nexu affinitatis, seu consanguinitatis coniunctum in reliqua hæreditate instituit.

Ex his igitur patet adulterium Franciscæ esse plenissimè probatum, & proinde iuxta etiam sensum Fisci eiusdem homicidium, & si ex interuallo patratum non est expiabile poenæ vltimi supplicij, nedum ex iusto dolore concepto, sed etiam quia honoris læsio semper viget iuxta illud *Virgilij Æneid. lib. primo.*

Æternum seruans sub pectore vulnus.

In nihilo refragante, quod non occiderit vxorem, & adulterum, quos assequutus fuerat in Caupona Castri noui, immò curauerit eorum carcerationem, quasi quod post recursum ad Iudicem non potuisset de facto suum honorem vlcisci.

Quoniam toto Cælo negamus potuisse aliquem illorum interficere, quia vel citato itinere fessus, vel agitatione mentis ita perturbatus, vt feбри corripere, & vltra quod præsenferat dictum Ecclesiasticum armis sulphureis esse præmunitum, vt in Processu fugæ ipse asseruit, tempore scilicet non suspecto, quia non adhuc commissa fuerant homicidia 76. 77. Erat int super dictus Ecclesiasticus terribilis, vt ex Teste Fiscali *fol. 167.* & ipsa Francisca fatetur *Summ. nostro num. 2. litt. C.* alias inquisitus pro exoneratione Archibusiata in Birruarios, vt ipse asserit 71. Et insuper nimis promptus, & dispositus ad resistendum, vt in Epistol. 18. vbi loquens de somnifero propinando domesticis addit ibi -- *E se per cattina disgratia la scopriessero, e la minacciafferò di morte, apra pure la porta, che ò morirò con voi, ò vi liberarò dalle loro mani* -- Vxor verò it-

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terrata, minax, irata, & furibunda, vt effectus demonstrauit, dum redacto in posse Curia Ecclesiastico coram Birruarijs, & Testibus ausa fuit ense denudato irruere contra virum, quem de facili occidisset, nisi fuisset impedita *fol. 50.* ipse verò inualidus, & viribus impar non poterat vtrumque, vel istorum alterum occidendo vindictam sumere ense viatorio solummodò instructus, curauit eius carcerationem in illa confusione animi, vt non potens occidere euitaret continuationem turpitudinis, & hac via impediret futura adulteria, immò, quotiès occidere potuisset, & non occidisset esset laudandus; quia non adhuc per sententiam Iudicis notorium factum erat adulterium, de quo solummodo vrgebant suspiciones.

Quo verò ad recursum ad Iudicem, quando affirmari posset renunciaisse facultati occidendi vxorem adulteram, quod negamus, supplico aduertì, quod prudenter se gessit Tribunal collocando Franciscam in Monasterio, vt decentiùs, quam in carcere conuersaretur, & deinde visa attestatione Medici de eius infirmitate, ne ibi destituta necessarijs auxilijs moretetur, & sic subiret in procedendo pœnam, à qua vbique locorum receditur, permittere attento consensu Domini Abbatis Franceschini fratris D. Inquisiti, vt penès Genitores deponeretur cum cautione de habendo Domum pro Carcere.

Sed laudare non possum cuiusquis fuerit, qui curauit euellere Franciscam à Monasterio falso commento infirmitatis, dum decentiùs, & magis legitimò poterat consequi intentum veritate patefacta, nempe ob prægantium, & vrgentem vterum, sed id factum fuisse non ob aliam causam, nisi aut vt Domino Guidoni filius occultaretur, dum lex præsumit filium fuisse genitum à legitimo Patre, quamuis vxor se præbuisset incontinentem, aut credens Francisca ex alio concepisse, quam ex viro pro posse palliauit eius grauidantiam.

Placeat interim Illustrissimo D. meo paulò vergere oculos Aretium, & parumper considerare D. Guidonem infamia notatum, dum ad eius aures peruenit decretum condemnationis adulteri, adultera vsque illuc sine pœna, nesciens ob infirmitatem suppositam non potuisse puniri, & in Puerperio sibi de industria occultato incapacem esse pœnæ, videns insuper Fran-

Franciscam reuerſam in ſuſpe & iſſimam domum Petri, & Violantis, qui inſtillarunt inhoneſtatem Franciſcæ, qui eam repudiarunt, & filiam mæretriciſe profeſſi ſunt, perdidit omnem patientiam, vt liquet ex diſpoſitione Blaſij fol. 318. *tergo ibi -- Mâ di più l'haueua ripigliata in caſa, dopo che gli ſi era fuggita, benchè lui l'haueſſe meſſa nel Monaftero, quæ conuerſa in deſperationem coegit infelicem virum ad tandem honeſtum eſſe, nec ideò reſuſcitatus ad Iudicem debet illi pœnam augere, vt in puncto *Ruin. conf. 2. num. 7. verſ. ſi Maritus occiderit uxorem lib. 5.**

Non negamus D. Abbatem Franceschinum dediſſe conſenſum reductioni Franciſcæ ad domum Petri, & Violantis, vt Religioni Domini mei Fiſci Aduocati acquieſcam, ſed ad ſummum oretenus, quia in ſcriptis illum videre non potui; Verum in noſtro propoſito non afficit D. Guidonem, cum non liqueat fuiſſe certioratum de tali conſenſu, & quatenus Fiſcus præſumat fuiſſe edoctum ab Abbate Franceschino eius fratre de dicto conſenſu, coacti erimus affirmare, vel ſcientiam non præſumi, vt infra oſtendetur, vel ad omne peius ad eſſe ſcientiam præſumptam, & non puto, quod ex huiusmodi præſumpta ſcientia poſſit irrogari pœna mortis, & D. Guido condemnari, cum non ſit de dicta ſcientia confeſſus, vel conuictus *cap. nos in quemquam 2. queſt. 1. ibi -- Nos in quemquam ſententiam ferre non poſſumus niſi aut conuictum, aut ſpontè confeſſum.*

Imò ſi D. Guido falſus eſſet ſciuiſſe conſenſum præſtitum à D. Abbate eius fratre, cum tamen iſtæ non haberet mandatum ſpeciale, nec generale ad lites, ſed tantummodo ad recipiendas pecunias ſibi ablatas à Franciſca, vt videre eſt fol. 136. Excedendo limites ſuę facultatis exaſperaret ipſius animum necnon Franciſcæ, Petri, & Violantis temeritate iſtæ excanduiſſet infelix Vir, vt raperetur ferè dixerim coactè ad vindictam ſumendam, quam diſtulit quouſque ſpem habuit dirimere matrimonium per errorem perſonæ contractum de Apicibus Iuris Canonici ignarus, quod ſcilicet error qualitatis perſonæ non reddit nullum matrimonium, ſed error indiuidui *Tancred. de matrim. lib. 7. diſput. 18. num. 8.*

Nec reſert, quod Franciſca tempore, quo occiſa fuit, eſſet ſub fideiuſſione de habendo domum pro Carcere, quaſi quod extitiſſet ſub Principis custodia, quoniam quidquid ſit ſi in

Prin-

Principis odium inquisitus Franciscam occidisset, dum tamen suum honorem recuperare voluit, & maculam suæ æstimationi iniustam detergere illius sanguine, & sic ex causa particulari, prædicta asserta custodia non attenditur, nec delictum aggrauat ut in fortiori casu de offendente habentem saluum conductum à Principe distinguendo firmat *Farinacc. quest. 29. num. 18. & ante eum Mascard. de probat. concl. 162. num. 18. & 19. vbi quod scientia non præsumitur.*

Præter quam quod quando loquimur de custodia intelligere debemus de publica, non de domo priuata, ut in alia probatur, nec satisfacit responsio, quod procederet in ipso custodito, non autem de custodiam Violante, quoniam nescio reperire probabile discrimen inter vtrumque, cum vterque agat de effugienda pœna, nec maior ratio considerari potest in vno, quam in alio, imò maiori excusatione dignus est tertius, qui huiusmodi custodias frangit, non probata scientia, quod offensus sub tali custodia existeret, quemadmodum excusauit occidens Bannitus ignorans Rebannitionem *Mascard. de probat. d. concl. 162. num. 27. Farinacc. quest. 103. n. 123.*

Si vltima pœna non sit puniendus D. Guido ob Vxorididium, eadem ratione puniri non poterit ob homicidia Petri, & Violantis, quia eadem causa honoris commissa fuerant, tum quia ad illorum instigationem Francisca reperijt Amasium, tum quia ut magis D. Guido vituperaretur non erubuerunt declarare Franciscam ex illicito coitu genitam fuisse in lucem æditam per meretricem, quod multum deturpat honorem totius Domus, ut obseruat *Gratian. discept. 863. num. 4. 5. & 6. cuius filix solent matrem imitari, tum etiam quia, ut supra dixi, Inquisitus exarsit, habita notitia de regressu Franciscæ ad eorum domum 318. tergo, & sequen. & comprobatur Alexander in sua confessione 646. ibi -- che si doueua ammazzare la Moglie, Socera, e Socero, perche detti Socero, e Socera teneuano mano al mal fare alla figlia, e gli faceuano i Ruffiani --* Quod magis claruit in fatiis sero, quo occubuerunt, nam pulsata Ianua, & statim ac Violantes audiuit charissimum nomen Amasij, illied illam aperuit, & patefecit, quod ni fallor remouet dubium, quod Petrus, & Violantes non eggererent amores filix, & Amasij.

Hoc vnum est, quod aut compellimur fateri dictos Coniuges de Comparinis dedisse nouam causam læsiuam honoris recipien-

piendo eam domi postquam declarauerant non esse eorum filiam, & de adulterio illius manifestè constabat, & proinde recedendum esse à pœna ordinaria, vt benè *Bertazzol. conf. 434. num. 15. vers. verum sumus*. Quamuis iustus dolor conceptus semper cor præmat, & ad vindictam stimulet, vt præter in alia relatos *Ioseph Mele in addit. ad Guizzarell. dec. 18. num. 5.*

Aut adhuc durasse, imò auctam fuisse causam iusti doloris, quæ fatis est ad asserendum homicidia dici incontinenti patrata, vt egregiè in terminis *Ruin. d. conf. 2. num. 7. post med. vers. durante igitur tom. 5. Honded. conf. 104. num. 30. vol. 1. Bertazzol. d. conf. 434. num. 15. vers. Præterea, Ioseph Mele in addit. ad Gizzarell. d. dec. 18. nu. 5. & seq. de Ponte de potest. Proreg. tit. 2. § 3. num. 32.*

Cumque tum ex confessione Guidonis, tum ex confessione sociorum, tum denique ex tot probationibus in Processu redactis constet D. Guidonem motum fuisse ad illos occidendos ex causa honoris, frustra Fiscus præten dit ex alia causa extranea delicta commississe, nam vt verum fatear nullam aliam causam reperio, quæ honorem non tangat, & vulneret; si contemlemur, quas D. Guido recenset in Processu *fol. 96. 97.* Quod scilicet prædicti Coniuges de Comparinis curassent fugam Franciscæ, quodque insidiati fuissent eius vitæ, quod vnum sufficeret ad euadendam pœnam ordinariam *Bertazzol. conf. 433. & 434. Grammat. dec. 5. per tot. vbi testantur fuisse mitius punitum, qui occidi mandauit minantem licet non plenè constaret de minis, vt patet nu. 16. vers. & si dicatur sequitur Tob. Non. conf. 109. nu. 6. & sunt Textus clari in l. prima C. quando liceat unicuique ibi -- Et mortem, quam minabatur excipiat, & id quod intendebat incurrat, & in l. sicut allegas C. ad leg. Cornel. de Sycar. ibi -- Dubium non est eum, qui inferenda necis voluntate præcesserat iure casum videri.*

Altera causa deducta per Fiscum consistit in lite mota super annullatione promissionis Dotis; Super qua exaduerso adhibita fuit omnis solertissima indago, & propterquam præten ditur in pœnas *Constitutionis Alexandrinæ*, & Bannimentorum incidisse, sed profectò labitur præten sio, nam si bene introspiciamus, sinè difficultate reperiemus huiusmodi Causam non

non esse minùs offensiuam Honoris, nam causa ob quam Petrus se eximere tentauerat ab obligatione præstandi Dotem promissam illa vnica fuit, quod scilicèt Francisca non esset eius filia, sed incerti Patris, & Męretricis, an autem huiusmodi declaratio vulneret æxistimationem Nobilis Viri, omnis Homo agnoscet.

Vtrumque sit huiusmodi prætenso locum sibi forsàn vindicare poterat antequam vt supra dixi haberentur confessiones Domini Guidonis, & Sociorum, tunc enim Fiscus poterat esse ambiguus ex qua Causa semouere potuerit ad occidendum; At postquat liquet ex omnium confessionibus causam Honoris dedisse impulsam, & compulisse ad occidendum, vt Dominus Guido asserit fol.678. ter. ibi -- *E dare alli medefimi delle ferite in riguardo, che li medefimi mi haueuano tolto l'Honore, che è il principale* -- Frustrà quęritur an ob aliam Causam illos occiderit, quo circa cum de causa Honoris liqueat Fiscus nunquam poterit probare illos fuisse occisos ex causa litis, & non Honoris, vt perneceffe requiritur ad incursum Bullę prædictę, vt in puncto *Mandos. conf.61. n.1. ad 3. Rota coram Puteo decis.97. & 98. lib.1.*

Quę etiam aptantur respectu Homicidij Francisę, quę intentaui iudicium Diuortij, nam si ob aliam Causam prætendisset separari, nec liqueret de sua Inhonestate, tunc vtique factus esset locus Alexandrinę; At cum læsus Honor causam dederit Homicidio longe versamur extra terminos Alexandrinę, alias adinuentus esset pulcherrimus modus, vt impunè Vxores prostitueretur, nam si post Adulteria admissa instituerent iudicium super separatione Thori reperirent tutum confugium ad euitandas Mariti iustè iratas manus, & tute redderentur Clypeo dictę Bullę, quamuis non obtentatum diuortium, sed ob earum Inhonestatem offenderentur.

Qualis pęna vltimi Supplicij eo minus ingeri poterit contra D. Guidonem sub prætextu, quod contra formam Apostolicarum Constitutionum, & Bannimentorum Homines Armatos congesserit, nam quando etiam controuerteretur; An liceat Viro congregare Homines ad occidendum Vxorem Adulteram, adhuc essemus extrà terminos Constitutionum, quę locum habent, quando Homines congregantur ad indeterminatum malum, & malum sequutum non est, tunc enim aptantur

tur dispositiones Bullares, at quoties vniuntur Homines ad patranda delicta, tunc eis sequutis attenditur finis, ad quem Homines congregati fuerant, & illius pœna indicitur, nec amplius queritur de principio, hoc est de conuenticula, vt in alia probaui, & addo aliud Votum Orani penès Decif. post. 2. vol. consil. Farinacc. vot. 61. num. 20. & ibi Adden. litt. A. in fine, vbi post disputatam quæstionem asserit ibi-- Sed certè præmissis non obstantibus inoccurrenti casu non credo recedendum à resolutione tantorum virorum, quos credendum est omnia cum maturitate, & prudentia considerasse, & rescripsisse S. D. N. Clementi VIII. -- Et in fine additionis testatur ità fuisse iudicatum in Camera Apostolica de ordine dicti Summi Pontificis, Bartol. in l. nunquam plura num. 10. ff. de Priuat. delict.

Quod etiam remanet comprobatum à Bannimentis Illustrissimi Domini mei cap. 82. vbi imponunt pœnam prò coadunatione Hominum ad malum finem, si ille prauus finis sequutus non sit, & nihil determinant vbi delictum, prò quo Homines erant coaceruati sit consumatum, quia hoc casu pœnæ conuenticulæ cessant, sed ingeritur solummodo pœna patrati delicti, vt supra dictum est.

Et quod congregatio Hominum ad effectum recuperandi dignitatem non cadat sub pœnis Constitutionum Apostolicarum penès Farinacc. cons. 65. num. 66.

Remanet tandem Armorum probitorum delatio, quam & si nonnulli Doctores asseruerint non esse confundendam cum delicto principali, contraria tamen Sententia crebriori Doctorum calculo recepta est, quia attenditur finis, quem principaliter Delinquens in mente habuit, vt in nostris præcis terminis Bartol. in l. nunquam plura num. 7. & ibi Adden. litt. C. ff. de priuat. delict. , & ibi Angel. num. 8. cum adden. litt. B. post medium, Bald. in l. Aduersus num. 7. C. de furtis, Andr. Barbat. de Cardinal legat. 5. quæst. num. 26. , Marsil. in l. si in Rixa num. 5. ff. ad leg. Cornel. de Sycar. , & in l. unica num. 54. Cod. de rapt. Virgin. , & in Prax. crim. S. Pro complemento num. 38. & post quàm plurimos Iodoc. in Pract. crim. cap. 77. num. 4. Andr. de Isern. in Constit. si quis aliquem de Percuss. illicit. cum Armis in fin. principy vers. sed prima opinio videtur verior, Viu. comm. opin. verb. Statutum puniens,
Ber-

Bertazzol. conf. criminal. 520. num. 1. Cephal. conf. 204. n. 42. & seq. lib. 2. Farinacc. quest. 22. num. 20. Et in puncto, quod occidens ex causa Honoris cum Armis prohibitis mitius adhuc punitur iudicatum testatur Matthau. de Re crim. dicta controu. 11. num. 46. & 47.

Quod etiam procedit in fortiori casu plurium Delictorum, quæ possunt patrari commodè separatim, & tendunt ad finem diuersum, nihilominus si eodem tempore, & ad eundem finem committantur, vna tantum pœna principalis delicti in mente habiti imponitur, vt volens committere furtum si transcendat muros Ciuitatis, quamuis illud potuisset committere absque delicto transcensionis, quod est grauissimum *Farinacc. quest. 20. num. 146.* adhuc vnica tantum pœna scilicet furti punitur veluti principalitèr habiti in mente paulò acerbiori pro transgressione murorum Ciuitatis, non tamen grauissima *Ioseph. Ludouic. decis. Lucens. 61. num. 3. vers. si vero forent par. 1. Farinac. quest. 22. num. 25.*

Non melatet, quod Bannimenta Illustrissimi Domini mei *cap. 8.* videantur dirimere quæstionem disponendo, quod pœna delationis Armorum confundi non debeat cum pœna delicti cum eis commissi, sed vltra, quod Bannimenta non comprehendunt aliquem ex Socijs vri forenses, & non de districtu, cum tamen passiuam interpretationem recipiant à iure communi, quoties Arma deferantur non ad malum finem, & deindè aliquod delictum committatur cum eis, quia Delinquens non habuit in mente delictum, quod patrauit, tunc de vtroque punitur, quia diuerso tempore diuersa crimina commisit, at quando quis animo occidendi arma prohibita deferat, & exinde occidat, tunc attenditur principale delictum Homicidij, cuius contemplatione Arma gestauit, & Homicidij pœna imponitur, non autè delationis Armorum, vt in puncto sic distinguendo comprobatur *Io: de Plat. in S. Item lex Julia il 2. in fine vers. sed quero An si aliquis Instit. de public. Iudic.*

Supplicio aduerti, quod Facinus, de quo agitur, redditur considerabile, quia tres nil mali timentes, sed vndeque timere debentes ceciderunt, non ob genus Armorum, quibus cæsi sunt, & sic eorum numerus non Instrumentum mortis excitauit admirationem, & idem pro certo fuisset si longissimis

simis ensibus, vel Bâculis, vel Saxis occubuissent, quo circa durissimum esset, quod Fiscus excandescat Homicidijs, & pro illis non potens exigere pœnam mortis, exigat eam pro delatione Armorum.

Præterea D. Guido negat expressè adhibuisse, detulisse, aut retinuisse arma reprobatae mensuræ, & licèt à quatuor eius Socijs asseratur tempore Homicidiorum habuisse præmanibus breuem cultrum, & simile armorum Genus dedisse Socijs, non tamen isti possunt illum conuincere ad pœnam ordinariam, vt benè disputata materia, & confutatis contrarijs firmant *Farin. quest. 43. num. 76. iuncto num. 69. & seq. Guazzin. defens. 32. cap. 8. num. 5. versic. Quæ opiniones per tot. Angel. de confess. lib. 3. quest. 19. num. 14.*

Non negat penes se habuisse Terzarolum vndique honustum, sed illum in occidendo non adhibuit nec ad occidendum gestabat, sed solummodò ad se defendendum, quoties in domo prædicta inuenisset extraneos paratos ad vim inferendâ, idquè sibi petuissimum fuit stante amplâ facultate deferendi huiusmodi genüs Armorum per Sratum Ecclesiasticum, & addere audacter possem etiam in Vrbe, quia de Vrbe ibi nulla fit mentio, quamuis excipiantur nonnulla loca ex verissimo axiomate, quod exceptio firmat regulam in non exceptis, *Alex. conf. 64. num. 2. lib. 4. Surd. conf. 430. nu. 7. lib. 3. Gratian. discept. forens. cap. 922. num. 31.*

Idque facilius sibi licere, credere poterat, quia in Vrbe extabant eius Inimici, & hic minabantur, ac insidias struebant, vt ipse D. Guido dicit, & ideò magis erat necessaria hîc delatio similibus armorum, quàm alibi.

Nec releuat, quod ex quo appensatè prætenditur occidisse ei suffragari non deberet licentia deferendi Arma, nam vltra quod ex supra deductis, & in alia homicidia prædicta stante causa honoris nequeunt dici ex interuallo patrata; Obiectū procederet quoties vsus fuisset dictis Armis ad occidendum, sed ijs non adhibitis non videtur posse dici non suffragari facultatem. In omnem casum quamuis de summo rigore loquendo posset dici armatus dd. armis occidisse, non tamen pœna rigorosa mortis esset puniendus *Cahall. resol. crimin. cas. 90. num. 7. ibi -- Nunquam tamen vidi de facto in his casibus d. condemnationem vitæ exequi, sed ex gratia in mitiorem commutari.*

De-

Demum nec ex quo astitit homicidijs commissis per Socios cum Armis prohibitis potest dici incidisse in pœnam prohibitionis, quia huiusmodi pœna, quæ locum habet in adhibente dd, Arma, non se extendit ad Socios, & assistentes, vt in puncto *Merlin. Pignattell. contr. forens. cap. 47. n. 2 1. cent. 1.*

Non loquor de Dominico, & Francisco, quia isti duo vltimi veluti forenses non ligantur nostris Bannimentis, prò omnibus tamen militant omnia, & singula fundamenta pro minoratione pœnæ, quæ militant pro Domino Guidone, cum accessoria non iudicentur ad imparia cum principali, vt in alia ostendi, non afferendo simpliciter Authoritatem vnus, vel alterius Doctoris, sed Decisiones Supremorum Magistratum, & hanc Sententiam seruari in Practica testatur *Clar. S. Homicidium sub num. 5 1,*

Ceterum enixe supplico, vt Illustrissimo Domino meo benigna fronte, ac serenis oculis perpendere placeat, quod Dominus Guido occidit, vt eius Honor tumulatus in infamia resurgeret. Occidit Vxorem, quia illi fuit opprobrio, & illius Genitores, qui postposita omni verecundia filiam repudiarunt, & declarare non erubuerunt esse Meretricis genitam, vt ipse dehonestaretur, cuius mentem peruerterunt, & ad illicitos Amores non pellexerunt dumtaxat, sed vi obedientiæ filialis cogerunt. Occidit ne scilicet amplius in dedecore viveret Consanguineis inuisus, à Nobilibus notatus, relictus ab Amicis, ab omnibus derisus. Occidit in Vrbe nempe, quæ aliàs fuit spectata Nobilem Matronam abluere maculas Pudicitæ proprio sanguine, quas ipsa inuita, & reluctante filius Regis impegit, morte propria alterius culpam, & violentiam expiando *Valer. Maxim. lib. 6. cap. 1. num. 1. Tit. Liu. lib. 1. Histor.* Et quæ vidit Patrem vndequaque impune, & non illaudatum se polluentem Parricidio filia, ne raperetur ad stupra *Valer. Maxim. vbi supra num. 2. Tit. Liu. ib. 3. Histor.* tanti illi cordi fuit ammittendi Honoris suspicio, vt potius voluerit orbari filia, quam illa incederet inhonesta, licet non spontè. Occidit in propria Domo, vt Adultera, eiusque Parentes conscij agnoscerent nullum locum, nullumque asyllum esse tutum, & impentrabilem Honori læso, neue ibi continuarentur opprobria, & Domus quæ turpium Testis fuit, esset & pœnæ. Occidit, quia alio

alio modo non poterat eius existimatio læsa tam enormiter ducere cicatrices . Occidit vt exemplum præberet Vxoribus Sacra Iura Coniugij religiosè esse seruanda . Occidit denique, vt pro posse honestus viueret, sin minus proprij Honoris offensi commiseranda victima caderet .

Quarè &c.

H. de Archangelis Pauperum Procurator .

Illustriss. & Reuerendiss. D.
Vrbis
GVBERNATORE
In Criminalibus.
Romana Homicidiorum.

P R O

Domino Guidone Francischino, & Socijs
Carceratis.

C O N T R A

Fiscum.

Noua Facti, & Iuris Domini Procuratoris Pauperum, cum Summario.

ROMÆ, Typis R. Cam. Apost. 1698.

Romana Homicidiorum.

Ill.^{me}, & Reu.^{me} Dñe. **C**onfessiones D. Guidonis Francischini, Dominici Gambassini, Francisci Pasquini, & Alexandri Baldeschi eius sociorum sunt nullæ, propterea non attendendæ, cum scilicet emanauerint metu rigorosi Tormenti Vigiliæ eisdem iniuste decreti. *Bertazzol.conf.crim. 341.nu.32.Giurb.conf.8.nu.19.Hect.falic.aliegar. 106.num.1. Mattheu de re Crimin. controu.27. nu.26. & id quamuis ipsi in eisdem Confessionibus fortassè adhuc perseuerent Paul. de Castr.confil. 273. nu.1. vol.1.*

Vt enim dicebamus in præterita ex gratia reassumenda, *Constitutio sa. me. Pauli V.* edita super Reformatione Tribunalium Urbis, quæ est in ordine *la 71. tit. de Iudic. Criminal. qui est S. 10. num.30. to. 3. Bullary noui pag. 198.* mandat hoc Tormentum non inferri nisi duobus copulatiuè concurrentibus, altero, quod Reus sit grauatus Indicijs vrgentissimis, altero, quod delictum sit atrocissimum, & de praxi testantur *Doctores allegati in dicta mea Informatione S. Quatenus verò Fifeus.*

Neque verò suffragari possunt assertæ facultates huius Tribunalis, quia qualescumque illæ sint, non habent locum, nisi in delictis pœna mortis puniendis *D. Raynald. obseru par.1. cap.5. S. 1. ad tertium num.121. & seq* vbi rationem reddit, quia quando Reus non est damnandus ad mortem, pro habenda ab eo Confessione, non est exponendus Tormento, quod potest illam causare, prout ferè causauit Alexandro, qui per duas vices in eodem Tormento lethalter defecit.

Delictum autem, quod fuit imputatum Domino Guidoni, & socijs, & quod ipsi confessi sunt non esse primi, nec secundi generis latè fuit probatum in præterita; Et quidem cum Dominus Guido fuerit motus ad occidendum, siuè occidi faciendum Franciscam Pompiliam Vxorem, Petrum, & Violantem Socros ex causa honoris, scilicet ob Adulterium, quod dicta Francisca Pompilia commisit conspirantibus, & adiuuantibus alijs, ista releuat à pœna mortis non solum ipsum iuxta *Textus, & Doctores allegatos in dicta Informatione S. Hoc stante cum seq. iunctis S. prædictis nullatenus, & S. seq.*

A

Verum

Verùm & Socios ex Doctoribus paritèr allegatis in dicta Informatione §. quæ dicta sunt cum tribus seqq. quibus addi possunt Bald. in l. prima in secunda lectura num. 36. in fine, Cod. unde vi; & in cap. de cetero, num. 4. vers. sed pone de sent. & re Iudic. Ioann. de Anan. in cap. final. nu. 2. vers. ultimò pro ampliori, de Raptor. Incendiar. & c. Roman. in l. prima, §. V usufructuarius, num. 17. ff. de oper. nou. nunciat. Marsil. in lege unica nu. 13. & duobus seqq. C. de Rapt. Virgin. Gabriel. consil. 170. nu. 3. ibi: Et multò minus debent morte hi affici, quia cum inspecta opinione hominum communi fabricitium excuset à grauiori pœna iustus Dolor. l. graccus, Cod. de Adulter. etiam hi, qui ab ipso vocati, & adducti sunt, debent similiter excusari: & nu. 13. lib. 1. Mazzol. consil. 57. num. 18. Facchin. cons. 36. num. 22. lib. 2. Alex. Rauden. var. cap. 7. num. 5. Grammatic. super Constit. Regni si Maritus, quæ est lib. 3. rubr. de pœn. Vxor. in Adulter. deprahens. num. 12. pag. 109. Mattheu de re Crimin. contr. 11. nu. 42. cum seq. Viu. decis. 197. nu. 26.

Abſque eo, quod in præſenti ampliùs opponi poſſit, quod de Cauſa honoris non conſtet, quia decretum Condemnatorium Canonici Caponſacchi pro dicto Adulterio emanatum in hoc Tribunali die 24. Septembris proximè præteriti, & quod datur per extenſum in Summario num. 8. rem facit claram, & manifeſtam cap. Veſtra, §. quibuſcumque, verſ. ceterum aliud eſt, & cap. queſitum de Cohabit. Cleric. & Mulier. dicitur enim ibi: Ioseph Maria Caponſacchio de Aretio pro Complicitate in fuga, & deuiatione Franciſca Comparina, & cognitione Carnali eiufdem, Relegatus per Triennium in Ciuitate Vetula: Nec iſta verba dici poſſunt Titulus Cauſæ, qui non facit quemquam Reum, vt ſupponit Dominus meus Fiſci Aduocatus, ſed ipſummet Decretum, ſiquidem Titulus Cauſæ à me viſus in Proceſſu originali fuit iſ, qui ſequitur: Aretij in Etruria fuga à viro.

In tantum verò dictus Canonicus fuit condemnatus dumtaxat in dictam pœnam, quia ipſe erat forenſis, & deliquerat extrà ſtatum, quo caſu debuiffet ſolum dimitti cum exilio, Farin. queſt. 7. nu. 7. verſ. ſed quid erit faciendum in fine.

Nec verum eſt, quod fuerit reſeſſum à dicto decreto, minusq; de mandata illius moderatio, nil enim aliud habemus, quàm quod, vt aliqualiſter indulgeretur aſſertæ adhuc honeſtati Mulieris, & decori dicti Canonici, pro quibus acriter, & inceſſan-

cessanter urgebat D. Procurator Charitatis eorum defensor, in mandato de excarcerando loco verborum dicti Decreti, fuerunt adhibita alia -- *Pro causa de qua in actis* -- quæ utiq. non important præcedentiū Correctionem, sed imò virtuales omnium Actorum, & consequenter etiam eiusdem Decreti Insertionem vulgata *l. affecto ff. de hered. Instit.*, cum alijs per *Paris. conf. 108. n. 47. lib. 1. Rot. coram Priolo decis. 423. n. 4.* Eoq; magis cum dictum Decretum immutari nec potuisset vtraque Parte non audita, vt ipsemet memini fuisse responsu eidē D. Procuratori Instanti pro dicta moderatione per *Gloss. in l. diuersa, Cod. de Transact. Bartol. in l. acta verj Tertiam opinionem, Cod. de Re Iudicat.*

Sed ad quid modò insistere in præmissis, dùm ex tot tantisque in præsentī deductis, & optimè more solito ponderatis per D. meum Procuratorem Pauperū (quæ quidem hīc non repeto pro euitanda Inutili superfluitate) concludenter adē constat de dicto Adulterio, & Vtteriori etiam Inhonestate dictæ Mulietis, vt nullus remaneat dubitandi locus de Causa honoris, quæ verè impulit D. Guidonem ad delinquendum; sufficeret enim, quod huiusmodi Causa verificaretur etiam postquàm ipse Delictum commisit, vt in puncto consuluit *Bertazzol. conf. Crimin. 42. lib. 1. Masseu. de re crim. consr. 12. num. 15. & seqq. Dond. consult. 97. num. 16 in fine Muta dec. Sicil. 61. num. 12. Dexart. dec. Sardin 5. num. 15.*

Vtteriùs non est opus modo insistere in præmissis, quia D. Guido Causam honoris, & quidem respicientem non solum vxorem, sed ipsolmet Socros expressit in sua Confessione præsertim fol. 98. ibi -- *Di poi è successa la fuga così obbrobriosa non solo alla Casa mia, che è Nobile, mà anco à quella di qualsivoglia anche Persona Vile, la qual fuga fece di notte tempo col Canonico Caponsacchi, e Compagni, la quale in progresso, ebe fu accompagnata nella fuga dal Vittorino in calisse fu veduta dal medemo Vitturino dare bagli, & abbracciamenti al sudetto Cunonico, di poi hò hauuta noua, che dormirno assieme in Foligno nell'osteria della posta, dipoi in Castelnouo, à segno tale, che resta conuinta per Adultera non solo per questo eccesso, mà con altri simili, che hò sentito di poi habbia fatto in Arezzo con altre Persone -- fol. 672. à tergo, ibi -- E richies-tolo detto Santi, se hauesse volsuto accudire di fare vn affronto alli Comparini à causa dell' bonor mio, e dell' Insidie, che face-*

uano sopra alla mia vita, gli rispose il detto Alessandro, che l'
 hauerebbe fatto, e se fusse bisognato qualched' un altro, l'haue-
 rebbe trouato, onde dopo alquanti giorni mi capitò in Casa Bia-
 gio. altre uolte nominato in Compagnia del citato Santi, e mi dis-
 se, che anche lui hauerebbe. accudito, trattandosi specialmente
 di materia d' honore, e di machina di vita -- & fol. 678. ibi --
 e mentre ci tratteneuamo neila vigna sudetta, cioè nella Casa
 di essa, si discorse di diuerse cose, e precisamente di quello, che
 si doueua fare. cioè dell' affronto da farsi alli Comparini, cioè
 Pietro, Violante, e Francesca mia moglie, e di dare alli medemi
 delle ferite in riguardo, che li medemi mi haueuano tolto l' ho-
 nore, che è il principale, & ancora m' insidiuano alla vita -- ,
 & fol. 683. à tergo in fine ibi -- & hauerei da dir tanto, che si
 potrebbe scriuere sino à domattina, quando uolesi raccontar
 tutti gli aggrauij, e spese, che hò riceuute da i Comparini sudet-
 ti, mà tutto questo non importaua niente, se non mi haueffero
 toccato nell' honore, & Insidiato alla vita -- & fol. 684. ibi --
 Come, che Santi di sopra nominato era mio Lauoratore nella
 mia Villa di Vittiano, & in conseguenza Informato di tutti gli
 aggrauij, che haueuo riceuuti da detti Comparini, & ancora ha-
 ueua Informatione dell' Indecentissima fuga presasi da mia mo-
 glie nella forma altre uolte detta, & essò da se di trouarmi, con-
 forme mi trouò il nominato Alessandro ad effetto, che mi potesse
 accudire in euento, che io hauesse uolsuto uendicare il mio ho-
 nore, e l' Insidie, che si faceuano alla mia vita -- & fol. 699.
 ibi -- e fù da mè arriuata in Castelnouo con il Canonico Capon-
 sacchi, doue furono arrestati da sbirri, e poscia condotti in que-
 ste Carceri, essagerai più uolte nel Tribunale l' eccesso del Par-
 to supposto, acciò si uenisse à punire costoro, mà io non hauendo
 mai ueduto, che s' sia preso espediente sopra un affare di tanta
 importanza all' honor mio, son stato quasi necessitato à prender-
 ne qualche resolutione per ricuperare quell' honore, che con tan-
 ta Infamia li Comparini medemi haueuano riuerberata in me-
 la loro Ignominia -- & fol. 720. ibi -- e quello, che dissi ad Ale-
 sandro, Biagio, e Domenico, lo dissi ancora à Francesco in occa-
 sione, che il medemo sapendo gli aggrauij, che io haueuo riceuuti
 nell' honore, mi si esibì di fare un smacco alla nominata mia
 moglie, & io all' ora gli risposi, che non meritaua lo smacco, mà
 bensì la morte.

Huius-

Huiusmodi enim Confessio acceptari debet cum sua qualitate, quam non potest Fiscus scindere, & ab illa separare ex vulgata Theorica Bart. in l. Aurelius, § item quesijt, ff. de libert. leg. Farin. conf. 67. num. 8. & conf. 187. num. 5. & quest. 81. num. 157. Vermigl. conf. 282. n. 8. Guazin. def. 30. cap. 7. n. 5. & defens. 32. cap. 35. num. 1. vers. sed contrarium, & num. 2. Mattheu de Re Crimin. contr. 18. num. 60. Triuisan. decis. 46. num. 32. lib. 2. vbi quod distinctiones, quæ solent ab aliquibus afferri, procedunt in Ciuilibus, non autem in Criminalibus, Sperel. decis. 64. num. 16. & decis. 108. num. 36. & decis. 136. num. 27. Rot. coram Merlin. decis. 103. num. 2. & in reuoc. decis. 308. num. 9. par. 13. & decis. 57. num. ult. par. 17.

Indubitanter quando, prout in præsentibus, agitur ad effectum puniendi pœna ordinaria, quidquid secus dici posset secundum aliquos ad effectum infligendi extraordinariam, Abb. in cap. auditis, num. 32. vers. putas tamen, de præscript. Vermigl. conf. 325. num. 6. Bertazzol. conf. crim. 27. n. 2. lib. 1. & conf. 449. num. 30. & 31. & conf. 450. per tot. lib. 2. Farin. quest. 81. per totam, & præcipue num. 112. & 157. Gomez. var. resol. tit. de homicid. cap. 3. num. 26. Foller. verb. & si constiterunt, n. 46. Ludou. decis. Lucens. 19. per totam, & præcipue num. 12. vbi Conclusionem extendit ad omnes qualificatas Confessiones in quouis genere Delictorum.

Præsertim quando, qualitas aliundè non solum adminiculatur, sed concludenter iustificatur; Vermigl. conf. 282. num. 12. conf. 431. num. 7. Ciriac. contr. 637. num. 7. Farinacc. quest. 103. num. 157. Angel. de Confess. lib. 3. quest. 11. num. 24. Ultrà enim dictum Decretum, & alia superius animaduersa habemus socios Criminis expressè deponentes se fuisse requisiti a D. Guidone ad vna cum ipso delinquendum ex prædicta Causa signanter Blasum Agostinelli fol. 316. ibi -- quale Sig. Guido mi raccontò, che gli si era fuggita la moglie con vn' Abbate, e che gli haueua portate via denari, e gioie, menandomi nella stanza, doue gli haueua leuate dette gioie, e denari, e mi disse, che lui voleua venire à Roma ad ammazzare la sua moglie, e voleua, che io, e detto Alessandro fossimo venuti con lui, &c. & fol. 317. ibi -- & in tale occasione detto Sig. Guido mi disse, che la sudetta sua moglie per fuggire sicuramente con detto Abbate, & acciò, che lui non se ne fosse accorto, haueua messo l'oppio nel vino per la Cena per far' addor-

mentare lui con tutti, e che litigaua con il suo Socero, quale non solo haueua giurato, che detta sua moglie non fosse di lui figlia, mà di più l'haueua ripigliata in Casa, dopo, che gli si era fuggita, benchè lui l'hauesse messa nel Monastero, dopo, che l'arriuò in Castel nouo nella fuga, - & Alexandrum Baldejschi fol. 623. ibi -- detto Sig Guido alla presenza mia, come di Biagio, di Francesco, e di Domenico, &c, disse, che si doueua ammazzare la sua Donna, cioè la sua Moglie, che staua qui in Roma à causa di ricomprare l'onore, & anche il Padre, e la Madre di detta sua moglie, perche tenessero mano à detta sua moglie al torto, che gli faceua nell'honore, † & fol. 645. ter. ibi -- ci disse anche alla presenza del Vignarolo, che si doueua ammazzare la Moglie, il Suocero, e la Suocera, perche detti Suocero, e Suocera teneuano mano al mal fare alla figlia, e gli faceuano li Ruffiani, e perche anco diceua detto Guido, che detti genti, che si doueuanò ammazzare, voleuano fare ammazzare lui, cioè esso Guido.

Causam autē honoris excludere nō valent attestationes eorum, qui assistentiā præbuerunt Franciscæ Pompiliæ vsq; ad obitum super declaratione ab eadem facta de numquàm violata fide coniugali; quia sunt simplices fides extraiudiciales, quæ non faciunt fidem, Cyriac. contr. 61. num. 6. & contr. 284. nu. 66. Rot. rec. decis 290. num. 2. in fin. par. 3.

Præsertim cum fuerint extortæ, & emendatæ pendente lite, & parte non citata per Hæredem eiusdem Franciscæ Pompiliæ ad euitandas vexationes Monasterij Conuertitarum prætendentis successionem ex causa inhonestatis, quodque propterea sequestrari, & iudicialitèr describi fecit omnia bona hæreditaria eiusdem, Roland. conf. 40. num. 5. lib. 1. Ciriac. d. contr. 61. num. 6. Rot. recen. decis. 323. num. 4. par. 2. & decis. 221. num. 14. par. 16.

Maximè cum aliqui ex Testibus vt suprà deponentibus sint legatarij eiusdem Franciscæ Pompiliæ, itaut ipsi deposuerint ad proprium commodum; subsistente enim inhonestate bona deuoluerentur ad dictum Monasterium, & consequentèr ipsi remanerent exclusi à suis legatis, l. nullus ff. de Testib. l. omnibus C. eod. Crauett. conf. 99. num. 2. & conf. 112. nu. 10. Bertazzol. conf. crimin. 60. num. 8. lib. 1.

Et quatenus fidem facerent, huiusmodi declaratio ad nihilum deseruiret, quia nemo præsumitur velle detegere propriam
tur-

turpitudinem, vt in his terminis respondit; *Rot. diuers. par. 4. decis. 276. num. 4.* Et sicuti non fuisset credendum ipsi met Franciscæ Pompiliæ præsertim extrà iudicium, & sine Iuramento deponenti, *Foller. in practic. verb. & si confitebuntur in 2. par. 3. partis principalis num. 9. & seqq. cum alijs adductis per Farinacc. quest. 43. num. 23.* ita, & multò minus credendum venit prædictis Testibus nè plus fidei adhibeatur exemplo, quàm originali *vulg. cap. fraternitatis de barett. Farinacc. quest. 69. num. 85. Cyriac. controu. 250. num. 9.*

Nec valet dici, quod nemo præsumatur immemor salutis æternæ; quia nec omnes præsumuntur esse S. Ioannes Baptista, vt dicit *Bald. in tit. de Pac. Constant. verb. Vassalli il primo in vsibus feudorum*, præsertim vbi agitur de præiudicio tertij; *Bartol. in l. si quis S. si quis moriens ff. ad Senat. Consul. Syllan.*; In fortioribus terminis *Marsil. in pract. S. Restat num. 12., & 16. in fin. Bertazzol. conf. crimin. 234. nu. pr. lib. pr. Prat. respons. crim. 33. n. 32., & seqq., Rouit. super pragmat. Regn. sit. de recept. delinquent. pragmat. 6. num. 5. Farinac. d. quest. 43. num. 28. cum duob. seqq. & quest. 46. n. 72. Hyeronim. Laurent. decis. Auenton. 15. num. 16. iuncto num. 8.,* èò magis quandò agitur ad effectû grauiùs puniendi eiusdè declarantis inimicum; *Mascard. de probat. concl. 144. num. 8., & seqq.*

Subsistente itaq; **C**ausa honoris nil prorsùs officit, quod dicta homicidia fuerint cõmissa ex Interuallo iuxtà latissimè firmata in præterita *S. nec verum est, vsq; ad S. prædictis nullatenus*, vbi ostensum fuit hanc esse communissimam Doctõrum opinionem, & iuxtà illam passim Iudicari non solùm in Sacra Consulta, verùm etiã in omnibus alijs Tribunalibus Mundi, vt benè animaduertit *Mattheu allegatus in dicta præterita de Re Crimin. controu. 12. num. 7., & 21.*

Aqua quidè opinione in præsentì recedi nequit ex eo, quod **D.** Guido vxorem non occiderit in acû deprehensionis eiusdem in fuga cùm Amasio; quinimò contentus fuerit illam deferre Iudici vti Adulteram; quia cùm tunc ei non fuerit tutum illam occidere (quia ipse erat solus, illa autem in societate dicti Amasij Iuuenis fortis, strenui, armis muniti, & delinquere soliti; & quod magis est prompti, & parati ad resistendum ne amata Amarillis eidem raperetur, quemadmodum & ipsa prompta fuit, & parata ad Impediendum ense

etiam capto, & denudato, vt dilectus Mirtillus non offenderetur) non propterea censi debet eidem pepercisse, & Iniuriam remisisse, sed cū, ne aufugeret in longinquiores partes, sine spe debitæ vindictæ, iustus, & repentinus dolor tunc illi consuluerit eam arrestari facere per birroarios, vt cū primū commodè posset illam occideret, peruenta postmodum comoda occasione, si illam occidit, reputari debet, ac si incontinenti eamdem occidisset in puncto *Ruin.conf.2. num.7.vers. si maritus occiderit uxorem lib.5. Giurb.conf.86. num.19.vers. sic maritus, & num.21., Io.Franc.de Pont.conf.98.num.24., & seqq. vsq; ad nu.33.vol.pr. repetit.subitū decisionem Sanfalic. 337.num.81., & seqq. vsq; ad n.90.Prat.respons.crim.25.n.31., & seqq. Cabrer. de met. lib.2. cap.45. num.13., vers. celebris succedit Quæstio, & vers. realis est, Paschal. de patr. potest.par. pr. cap.5. sub num.3., Mattheu de re Crimin. contr.12.n.28., nouar. in Summ.Bullar.par.pr. Commentar.72.num.81.vers. ex quo Adulterio, Polic. de Reg. Aud. To.2. tit.10. cap.7. num.29. vers. quemadmodū tunc dicitur incontinenti, Marta vot., seu decis.206. num.7., & num.10., præsertim in vers. sed quando committitur, Mut. decis. Sicil.61. sub num.11. Gizzarell. decis. 18. num.5., ibiq; Baldax. de Angel. nu.4. & Didac. de Mar. sub num.7. Panimoll. decis.86. num.29., & duobus seqq.*

Et generalitèr, quod ea, quæ fiunt ex Interuallo dicantur fieri incontinenti, si fuerunt facta cū primū fuit oblata occasio illa faciendi, est *Textus in l.2. §. Confestim, ibi -- Confestim autem sic erit accipiendum, ubi primum potuit -- ff. ad Sen. Consult. Tertullian., Bellon. de potest. eorum, quæ fiunt incontinenti, lib. pr. cap.6. num.5., & pluribus seqq.*

Et tantū abest, quod lex præsumat hanc Iniuriam à marito remissam, vt imò credat semper in illo durare animum vlciscendi, ex quo fit, vt vxor teneatur etiā sibi præcauere, adeò, vt ipsius cædes postea sequuta numquàm dicatur proditoria *Mastrill. ad Indult. gener. cap.29. num.6.vers. sed quid si maritus, Nouar. in Summ. Bullar. dicta par. pr. Comment. 72. n.81., Donde. consult.97. num.16.vers. aliòquin, ad quod multū facit etiā Mut. dicta decis. Sicil. 61. per totam, vbi est casus de marito, qui fecerat vocari vxorem per filium extrā mænia Ciuitatis, vt tutò illam ibi occideret, & tamèn maritus fuit damnatus solum ad Remigandum per septennium.*

Et

Et facit etiã id, quod alij Doctores tradunt, quod scilicet maritus possit dissimulare turpitudinem suæ vxoris, vt tutò postea de illa vindictam sumat *Io. de Amic. cons. 4. nu. 4.*, *Anonym. apud Sanfelice. dicta decis. 337. num. 37. in fine, & n. 59. Dond. consult. 97. num. 16.* sicuti potest illam dissimulari facere per vxorem, vt securè sumat vindictam de illo, qui vult eius pudicitiam offendere iuxta famigeratissimum Consilium *Cast.* 277. lib. 2.

Tantò magis, quod ab ipsomet D. Procuratore Charitatis defensore dictæ Franciscæ Pompiliæ, & Canonici Camponfaccij in sua allegatione impressa §. *borreret quidẽm Animus* dictus D. Guido fuit repræhensus de huiusmodi delatione ad Iudicem, per ea, quæ aduertunt *Castrens. dicto cons. 277. sub num. 3. propè fin. vers. sed nec Iudices, lib. 2.*, *Menoch. de Arbitr. cas. 398. num. 26.*, *Neuizan. Silu. nuptial. lib. pr. vers. non est nubendum nu. 34.*, & *num. 89.*, *Soc cin. lun. cons. 34. nu. 9. lib. 2. Nouar. in Summ. Bullar. Comment. 72. sub num. 81. vers. undè meritò*; quorũ plures & nos allegauimus in nostra *præterita Informatione §.*, & *hæc nostr.*, Asserunt enim vnanimiter prædicti DD., quod mariti reputantur viles, & Corrupti, si proprijs manibus non sumunt vindictam, sed expectant illam fieri per Iudices, qui summoperè rident, & cachinantur, vnde non mirum, si Infelix maritus etiã post dictum recursum factum ad Iudicem, quem tunc illi suggestit Inconsultus Iræ Calor, voluit de amisso honore se vindicare; deliquit enim, vt vulgi, & Doctõrũ Censuram euitaret, & sic ne amisso honori istam quoq; Ignominiam superadderet.

Nil autem releuat, quod D. Guido in dicta sua Confessione aliquando ultra Causam honoris expresserit etiam illam Insidiarum, quæ tendebantur suæ vitæ, quia cum illa Honoris fuerit potissima in ipsius mente, vt ipsemet asserit d. fol. 678. ibi - *In riguardo, che li medemi mi haueuano tolto l'honore*, & *che è il Principale* - non est curandum de alia, quæ tamquam Debilior, prædictæ venit post ponenda, vt præuentiuè firmatum fuit, in *præterita*, §. & *in omnem Casum*, vbi præ cæteris adduximus in his præcis terminis loquentem *Mattheu de Re Crimin. contr. 11. num. 37. & duob. seq.*

Et quatenus hanc etiam Causam attendere velimus, ista pariter est sufficiens ad euadendam Pœnam ordinariam l. 1. *Cod. quãdo*

do lic. unicuique, l. si ut allegas, Cod. ad leg. Cornel. de Sicar. l. nec timorem 7. vers. timuit enim mortem, & vers. sed iustus fuit timor, ff. de eo, quod metus Caus., Innoc. in cap. si verò 3. sub num. 1. de sent. excom. m. Bertazzol. conf. Crimin. 433. num. 4. & seqq. & conf 434. num. 22. Thob. Non. conf. 109. num. 6. Cepol. Crimin. 41. num. 10. vsque ad finem, Farin. conf. 35. num. 22. Cyriac. contr. 105. num. 73. & seqq. Boer. dec. 169. num. 2. Grammatic. dec. 5. per totam, Baldax. de Angel. in Addit. ad Gizza-rel. dec. 5. num. 6.

Agnoscit fiscus relevantiam prædictorum; idcirco recurrit ad Circumstantias delictum concomittantes, nempe Coadunationem hominum Armatorum, licem vertentem inter Dominum Guidonem, & Comparinos, qualitatem Armorum prohibitorum, & denique ad locum ubi delictum fuit commissum, cum scilicet Franciscæ Pompilia detineretur loco Carceris in domo in qua fuit occisa, sed facilis est Responsio, quia huiusmodi circumstantiæ possunt quidem aliquantulum exasperare poenam delicti Principalis, sed nulla tenus illam extollere ad summum apicem, adeo, ut D. Guido, eiusque Socij ultimo supplicio veniant puniendi; sic decisum in terminis habemus apud *mut. d. decis. sicil. v. præsertim in fine, ibi - facta ergò relatione in visita generali mense Martij 1617. coràm excellentia sua, ex quo visus fuit malus modus eam occidendi sic vocata per filium, & postea eius Cadaver quasi repertum fuit, quod Canes comedebant extra d. mania, fuit ipse Leonardus condemnatus super regijs Triribus per annos septem - Sonfelic. d. decis. 337. num. 13. ibi - & quamvis aliqui ipsorum fuerint damnati ad relegandum fuit ex causa incisionis Genitalium de facto, pro quo delicto dicebat Fiscus esse puniendos leg. Corneliæ poena de Sicarijs - Mattheu de re Crimin. d. contr. 11. num. 46. ibi - at re maturius in Aula perpensa iudicatum fuit Maritum nimis dolose operatum fuisse absentiam simulando, fratrem secum ducendo, atque Armis prohibitis necando; quia solum ex usu Armorum igneorum delictum redditur insidiosum apud nos &c. sic decisum fuit propter hunc excessum condemnandum fore in poenam exilij per quadriennium, & ad soluendum duos mille ducatos &c. qua in gradu supplicationis fuit confirmata - & contr. 12. sub n. 29. ibi - Et sic decisum in specie proposita condemnando Franciscum Pal-*

Palomeque in pœnam Remigy per decennium &c. ex qualitate Armorum igneorum pœnam aggrauando ; in similẽ pœnam fuit condemnatus Antonius Alvarez, qui uxorem appensate occiderat, quia meretricabatur &c. ex eo exacerbata pœna, quod omiffus Iudicatus fuit, cum non conquereretur de simplici adulterio, sed de vita meretricis quod perfici nequibat sine desidia, vel conuenientia Mariti .

Et ratio est manifesta, quia negari non potest, quin D. Guido, eiusque Socij prædicta omnia gesserint ex eadem Causa honoris, propterea sicuti ista reputatur sufficiens ad euadendam pœnam ordinariam homicidij, de qua *toto titulo ff. & Cod. ad l. Cornel. de Sicar.* ita pariformitèr sufficiens reputari debet ad effugiendas alias qualcumque pœnas appositas in Constitutionibus Apostolicis contra committentes alia delicta in eisdem expressa ; semper enim attenditur principale propositum in Delinquente ; *l. si quis nec Causam ff. si certum petatur* ; cuius etiam animus semper distinguit malefica, *l. verum est, et l. qui iniuriæ ff. de furt.* ut in puncto ad effectum scilicèt euitandi pœnam indictam in *Constitutione 75. sa. me. Sixti V. Bullar. nou. To. 2. pag. 468.* contra Coadunantes homines armatos, quotiescumque constat illos fuisse coadunatos ad effectum committendi aliud Delictum, scilicèt frangendi Carceres, & detentos in eis eximendi resolverunt tres Sacrae Rotæ Auditores celeberrimi, nempe *Coccin. Blanchett. et Oran.*, quorum vota habentur impressa inter decisiones collectas *per Farinacc. post eiusdem consil. vol. 2. dec. 61. ibique Add. in fine,* restatur sic fuisse resolutum in plena Camera, in qua de mandato *sa. me. Clementis VIII.* Causa fuit proposita, & examinata.

Non refragante, quod postmodum incontrarium scripserit fouendo partes fisci, cuius erat Aduocatus *Spad. conf. 25. lib. 1.* quia eius opinio fuit ex professo confutata, & solidissimis rationibus, & argumentis reiecta à *Vermigl. conf. 356. per tot. et à D. Rainaldo obseru. par. 3 cap. 25. §. 4. à nu. 9. usque ad 33.* & ante eos idem quoque senserat *Doctor Anonymus inter Consil. Farin. conf. 65. à numer. 68. ad 141. et ipsemet Farinacc. quest. 113. num. 60. Guazzin. de confisc. ampliat. 86. concl. 13. num. 3.*

Et in terminis ad effectum euitandi pœnam bannimentorum, seu

feu Constitutionum Apostolicarum delationem Armorum prohibentium plures Doctores allegauit in *præterita* §. *neque verò*, & præ alijs *Polie. de Reg. Aud. Tom. 2. tit. 10. cap. 6. num. 8. & sequentibus*, qui latè materiam examinat, alios congerit Dominus meus Procurator Pauperum in *sua presenti Informatione* §. *remanet tandem*, quibus addo *Caball. resol. crimin. cas. 62. per totum, Mattheu de crimin. dicta controuers. 11. num. 46. cum sequentibus*, & *dicta controuers. 12. sub num. 29. Capyc. latr. dec. 78. num. 7. vers. discussio tamen negotio*, vbi quia actus præparatorius confunditur cum præparato, & testatur ità fuisse resolutum per *Sac. Conf. Neap. & num. seq.*

Similiter ad effectum effugiendi pœnam appositam contra occi- dentes detentum in Carceribus, & sic existentem sub custodia Principis plures Doctores allegauimus in *præterita* §. *similiter nec aggravari*, quibus nunc addo *Prat. in addit. ad Paschal. de Patr. potest. part. 3. cap. 6. vers. ex his quoque D. Raynald. obseru. part. 1. cap. 4. §. 1. ad 4. num. 65. & seqq. Mut. decis. Sicil. 36. in fine.*

Nec quidquam facit, quod *Polie. loco citato*, & aliqui alij ex Doctores proximè allegatis loquantur de homicidio commisso in rixa, siue ad defensionem propriæ vitæ; intantum enim circumstantia rixæ releuat delinquentem ab ordinaria pœna delicti, in quantum ignoscitur ei, qui voluit vlcisci pro- uocatus, vt inquit *Vlpianus in l. qui cum natu maior 14. §. idem puto ff. de Bon. libert.* & in quantum ipse tunc iusto dolore præuentus non est in plenitudine intellectus, vt post *Bald. in cap. 1. in fine, de pac. iuram. firman. tradit Bossit. de homic. n. 60. in fin. Vermigl. conf. 26. n. 8.*

Vtraque autem ex his rationibus proculdubio militat in mari- to, & quocumque alio homicidium committente ex Causa honoris iuxtà firmata in *præterita* §. *hoc stante*, & §. *sequenti*; etiam si id faciant ex interuallo ex allegatis pariter in *præteri- ta* §. *nec verum est cum multis seqq.*

Et in his præcis terminis, quod scilicet occidens vxorem adul- teram ex interuallo excusetur ob iustum dolorem, qui facit, quod ipse non sit in plenitudine intellectus præ cæteris fir- mant *Carer. in pract. crimin. tract. 3. de homicid. §. sexto igitur excusat iustus dolor, num. 4. fol. 160. à tergo, Gomez ad l. Tau- ri*

ri 80. num. 58. *versitem homo*, *Mattheu de re crimin. d. Con-*
trou. 12. n. 14.

Inquit enim *Vlpianus in l. mariti 29. in princip. ff. ad l. Iuliam de*
adult. ibi: debuit enim uxori quoque irasci, quæ matrimonium
eius violauit. Iram autem fieri ex dolore acceptæ contume-
liæ, & naturam eo modo insurgere, vt illam à se depellat,
quocumque modo potest, benè aduertit Zaccb. qq. Medicoleg.
lib. 2. tit. 1. quæst. 6. num. 28. & seqq. cum difficilius fit iram
cohibere, quàm miracula facere, vt inquit D. Gregor. dial. 1. &
aduertit Boss. tit. de homic. num. 60. Vermig. conf. 26. nuu. 7. &
conf. 43. num. 3.

Alij verò Doctores loquentes de committentibus homicidium
pro defensione propriæ vitæ cum Armis prohibitis, & in Car-
ceribus pariter suffragari debent, quia defensio honoris pro-
prij à viris ingenuis præsertim nobiles neditum vitæ æqui-
paratur *liusta ff. de manum. vend. sed ipsimet vitæ antefertur*
iuxta illud Apostol. epist. 1. ad Corinth. cap. 9. Expedi mihi ma-
gis mori, quam vt gloriam meam quis euacuet. Et D. Ambros.
lib. 3. offic. cap. 4. Quis enim vitium Corporis, aut Patrimouij
damnum non leuius ducat, vitio animi, & existimationis dis-
pendio? Marc. Tull. Philippic. 3. Ad decus, & libertatem natū
sumus, aut hæc teneamus, aut cum dignitate moriamur. Me-
noch. conf. 96. num. 15. & conf. 98. num. 8., Valenz. conf. 92. n. 1.
vsque ad 7., Prat. respons. crimin. 25. num. 29. & pluribus seqq.
Ioseph Mele in addit. ad Gizzarel. decis. 18. num. 6. & sequen-
tibus, in his terminis Bertazzol. conf. 42. num. 6. Dond. con-
sult 97. num. 8. & 9. Sanfelic. dec. 337. seu in allegat. Aduocat.
ibidem Impress. num. 34. & seqq. Panimoll. decis. 86. num. 23. &
& seqq.

Adeò, vt qui honorem suum spernit, & non curat recuperare se
vliciscendo nil differat à Belluis, *Gizzarell. dicta decis. 18. n. 5.*
num. 5. Calderò decis. 42. sub num. 35. & alij ex mox citatis;
Quinimò irrationabilior ipsismet Belluis reputetur, iuxta au-
rea verba *Theodorici apud Cassiodor. lib. 1. var. cpist. 37., quæ*
nos retulimus in præterita §. Nec verum est post medium, Ber-
tazzol. dicto conf. 42. num. 9. vers. & se non est plusquam-
Bestia.

Quouero ad litem, quæ vertebat inter Domnum Guidonem, &
illos de Comparinis super suppositione Partus, vltra mox di-
cta,

Et, iterum supplico animaduerti quod Constitutio Alexandrina non intrat, ubi ex parte offensi præcessit aliqua prouocat, vt benè firmat *Farinaec. conf. 67. per totum*, sequendo decisionem Rotæ, quam ponit in calce eiusdem Consilij, & nos præuentiuè perpendimus in præterita *S. absque eo quod*, quæ quidem prouocatio in præsentis resultat ex iniuria; quam dicti de Comparinis pendente lite irrogarunt eidem D. Guidoni propter complicitatem habitam in d. fuga, & in adulterio per filiam illius occasione commisso.

Altera lis, quæ præteditur mota per Franciscam Pompiliam aduersus Dominum Guidonem super diuortio, potuisset omitti, quia vltra animaduersa per Dominum meum Procuratorem Pauperum in sua præsentis Informatione *S. quæ etiam apertantur*, ea fuit nulliter intentata, exequuto scilicet, vt mihi supponitur, monitorio dumtaxat contra Dominum Abbatem Paulum fratrem Domini Guidonis, qui nullum ad hoc mandatum habebat, præcipue non probato, quod idem D. Guido habuerit scientiam eiusdem litis, vt præteditur, intentatæ.

Quoad Blasium Agostinelli abundè fuit scriptum in præterita, cum scilicet ipse non fuerit denuò constitutus, & in præcedentibus factus fuerit dumtaxat adstitisse dictis homicidijs, non aurem manus apposuisse, ita, vt illum nullatenus afficere possit rigorosa opinio *Caball. resol. criminal. cas. 300. numero 73.* dicentis huiusmodi Auxiliatores haud esse immunes à pæna homicidij, quotiescumque proprijs manibus aliquem occidant, quamquam huius authoris opinio fuerit per nos erronea demonstrata in præterita in *S. quidquid in contrarium*,

Voluisssem etiam aliquid addere dictis in præterita super forensitate, & minori ætate Dominici, & Francisci; Verum quia nondum benè innotuit, quo iure Fiscus prætedat illas elidere, idè satisfaciam in Responsione, pro certo credens in præsentis non euenturum, quod Dominus meus Fiscus Aduocatus suas allegationes conficiat, & nostris etiam respondeat absque eo, quod mihi communicentur, prout cum summè dum mei, sed aliorum admiratione contigit in præterita; ipse enim, sicut & ego vnice debemus quærere veritatem, eiusque esse Aduocati, sicuti ambo sumus officiales Principis,
iuxta

iuxta animaduersa per Dominum Rainald. obseru. p. 2. cap. 19. S. 1. n. 156. , qui quidem nil aliud exoptat, quàm, quod iustitia ministretur, & cum agatur de pœuperibus, carceratis, in eorum causis pietas triumphare debet, quia ipsi sunt thesaurus Christi, vt benè ad nostrum pœpositum inquit Petrus super Rit. M. C. Vic. rit. 23. num. 4. circa med.

Quate &c.

Desiderius Spretus Adu. Paup.

Illustriss. & Reuerendiss. Dño
Vrbis
GVBERNATORE

In Criminalibus.

Romana Homicidiorum.

P R O

D. Guidone Francichino, & Socijs
Carceratis.

C O N T R A

Fiscum.

Noua Iuris D. Aduocati
Pauperum.

ROMÆ, Typis R. Cam. Apost. 1698.

Notizie di fatto , e di ragioni per la Causa Franceschini .

Pietro Comparini, le di cui sostanze non si stendevano ad altro, che alla somma di dieci , in dodici mila scudi sottoposti à fideicommissò , con peso anche di moltiplicare i frutti per vna buona porzione , che perciò hauerebbe douuto viuere parcamente per non ridursi in stato di miserie , stante il vincolo di tutto il capitale , e di vna parte de medesimi frutti, essendo troppo indulgente alla gola, e dedito all'ozio, e hauendo preso moglie con pochissima dote , con essergli sopraggiunte liti, venuta la riduzione de frutti de luoghi di Monte, & altre auersità , si ridusse in stato assai pouero, e miserabile , à segno che , seguita più volte la di lui carcerazione per debito , e fatta l'indicazione de beni , riceuè dal Palazzo Apostolico la limosina segreta d'ogni mese .

Ritrouandosi in tali angustie , premeditò maritare Francesca Pompilia sua figlia con qualche persona , che si prendesse cura di sostentarla insieme con Violante Peruzzi sua Moglie , Donna molto scaltra, e di gran loquacità , con il di cui parere haueua intrapreso l'affare , e fù stimato à proposito il partito con Guido Franceschini , il quale conducendo la Sposa, e i Genitori in Arezzo sua Patria , hauerebbe potuto trouare opportuno rimedio alle necessità delli medesimi, mediante l'assistenza in Roma dell'Abbate Paolo Franceschini di lui Fratello, huomo attiuo, e diligente, con dar sesto al patrimonio di Pietro sequestrato , e intrigato da suoi Creditori , onde essendo stata costituita la dote in luoghi ventisei di Monte , con la speranza della futura successione al rimanente de i beni in virtù del fideicommissò , al quale la Sposa era chiamata , fù abbracciato questo partito , come vtile à Pietro, e sua moglie per liberarsi da gl'incomodi , ne quali si ritrouauano, e altresì van taggioso alli Franceschini , che attesa la diligenza dell'Abbate , e qualche dispendio temporaneo della Casa , poteuano credere di douere guadagnare à suo tempo il pecusio predetto quasi intiero, e poco, ò nulla deteriorato .

A

Tali

Tali furono à principio i scambievoli oggetti dell'infauſto matrimonio, dal che ſi conoſce, quanto ſia debole preteſto il dire, che Guido ne i trattati ingaunaſſe Pietro, e la Moglie nel dar nota di godere vn'annua Entrata di ſcudi mille ſettecento, trouata poi molto inferiore, perche il fine primario, con cui fù conchluſo, poteua molto ben conſeguirſi, anche con vn'Entrata di ſomma molto minore, ſapendoſi in effetto, che eſſendo ſtata moſtrata da Violante l'iſteſſa nota à Pietro Comparini, diſſe nel vederla *oh oh mi ballerebbe ſolo che foſſe la metà*, e farebbe ſtata grandiffima balordaggine di Pietro, che ad vna ſemplice nota di vn Foreſtiere, ſenza pigliare altre informazioni, hauelli dato marito alla figlia, ogni volta, che la cauſa impulſiua foſſe proceduta dalle preſuppoſte facultà in detta nota: Anzi ne meno in grado di conuenienza, e ciuilità puol eſſere riconuenuto Guido, perche quando da Pietro fù prodotto in giudizio la detta nota, l'Abbate Paolo Franceſchini ne reſtò fortemente marauigliato, onde ſgridatone con lettere il fratello, queſto riſpoſe hauer ciò fatto à perſuaſione di Violante, la quale deſiderando l'effettuatione del matrimonio, e vedendo irreſoluto il Marito, per animarlo, induſſe Guido à dare la ſudetta nota con alterazione.

Hebbe dunque effetto il matrimonio, e tutti inſieme ſi conduſſero alla Città d'Arezzo, doue i Comparini non furono maltrattati, come ſi pretende di giuſtificare da vna fede extragiudiciale di vna Serua partita di Caſa con diſguſto, la di cui ſola lettura baſta per farla conoſcere fatta con animo cattiuo, e à iſtigatione di altri, conforme ella medefima ſi è dichiarata con diuerſe perſone, dimoſtrandolo con nauſea l'inſipida affettazione, con cui è concepita, e ſpecialmente, doue dice, che vn'Agnellino di latte ſi faceua ſeruire per alimento ſufficiente per ſette, ò otto perſone in vna ſettimana intiera con altre ſimili improprietà da non crederſi, mà furono trattati con ogni honoreuolezza, e decoro, conforme atteſtano Monſignore Veſcouo, e il Signore Commiſſario di detta Città, Soggetti molto qualificati, e molto più degni della Serua maligna, e ſubornata, e ſi puole hauere ancora l'atteſtatione di vno, che hà ſeruito ſin quella Caſa per tredici meſi, nel tempo, che vi ſono ſtati li ſudetti Pietro, e Violante

lante, potendo raccontare molte particolarità de i buoni trattamenti, che riceueuano da i Franceschini.

Ben è vero, che nacquero ditturbi di confiderazione in quella Casa cagionati dalla lingua mordace di Pietro, e dalla superbia di Violante sua Moglie, mentre beffandosi di tutti gl'andamenti, che faceuano i Franceschini, auuanzandosi con atti di superiorità, portarono alla Madre de i Franceschini, e con essa à tutti gl'altri della famiglia, trauagli rileuantissimi, dissimulati però all'hora, per non violare le leggi dell'Hospitalità, e ciò non ostante, quando Pietro, e la Moglie si disposerò per il ritorno à Roma, subito che n'espresero i loro voleri, furono proueduti di danaro per il viaggio, e in Roma di mobili per riordinare la Casa derelitta.

Giunti in Roma Pietro, e Violante, fù spedito monitorio giudiciale à istanza di Pietro, in cui egli espone, che Francesca Pompilia realmente non era sua figlia, e però non era tenuto sodisfare alla dote promessa, e per giustificarlo portò l'attestazione dell'istessa Violante sua Moglie, quale in sostanza diceua, che ella medesima per tenere à dietro i Creditori del Marito in virtù delli fideicommissi, e per godere anche il frutto de Luoghi di Monte, hauua finto d'essere grauida, e poi d'hauer partorita vna figlia, cioè la detta Francesca Pompilia hauuta da vna vilissima partoriente per opera di vna Ostetrica.

Da vn'atto si biasimeuole diuulgato in vn subito per tutta la Corte, nacque per necessità di natura ne i Franceschini vn' odio inteso verso gl'Autori di esso; mà poterono astenersi da i douuti risentimenti con la speranza, che, se Francesca Pompilia non fosse stata figlia di Pietro, e Violante, come si era presupposta nelli sponsali, si sarebbe potuto annullare il matrimonio, e così purgarsi da tal macchia la loro reputazione. Testimonij di questi loro sentimenti sono molti Dottori, e Virtuosi, che furono richiesti da i Franceschini, à studiarne il punto, e dirne il loro parere, mà perche questi furono discordanti, non vollero allora i Franceschini cimentarsi à vna impresa d'esito dubbioso, nella cui promozione doueua necessariamente confessarsi, e presupporfi la non filiazione, dalla quale confessione poi sarebbero restati

stati pregiudicati nell'interesse della dote, e perciò stimarono bene il tralasciare per all' hora d' esporli al pericolo di perder la dote, e di non poter dare di nullità al matrimonio.

S'opposero bensì al monitorio, e ottennero per Francesca Pompilia la manutentione nel quasi possesso della filiazione, e il decreto per trasferire i luoghi di Monte dotali, mà essendosi Pietro appellato da tal Decreto, nel far proporre la Causa nella Segnatura di Giustizia, venne à vna copiosa distribuzione di Scritture per Roma, fatte da lui stampare di grauissimo pregiudizio all'honore de Franceschini, per non dire infamatorie, i quali hebbero di nuouo tanta forza da poter raffrenare i giusti risentimenti dell'animo loro irritato sù la riflessione della speranza, che haueuano di poter far conoscere alla Corte, come seguì, non meno le menzogne de gl'Auersatij, che il loro proprio candore, e auuiati da questa speranza, soffrirono susseguentemente con ogni pazienza moltissime vessationi orditeli con diuerse Cabbale, e tergiuerfazioni per impedire l'effetto della traslatione de luoghi de Monte dotali, con hauerli suscitati i Comparini vari suoi Creditori, ò fossero veri, ò pure colusui, onde stante le dette opposizioni, prouarono bensì l' incommodo, e la spesa della traslatione, mà non già il commodo del frutto, di cui ne pure vn bimestre poterono già mai riscuotere.

In tale stato erano giunti gl'affari dell'vna, e l'altra parte, quando Guido leuatosi vna mattina trouò mancatsi nel letto la moglie, onde immediatamente leuatosi, vidde sualigiati li Scrigni, e fuggita la Donna, non senza sospetto d'hauer dato il sonnifero la sera antecedente al medesimo Guido, e a tutta la famiglia, e sù la consideratione d'essere ciò succeduto per le suggestioni di Pietro, e Violante, conforme n'hauua più volte sentite le minaccie, s'incaminò velocemente per la strada di Roma, e dopo vn precipitoso viaggio giunte la fuggitiua nell'Osteria di Castel nuouo accompagnata dal Canonico Caponsacchi d'Arezzo, elperche essendo solo, e disarmato, e quelli armati, e risoluti, si conobbe insufficiente à vendicare tale eccesso, stimò opportuno di fatli arrestare con il ricorso alla Corte di detto Luogo,

la

la quale hauendo fatto catturare da suoi Sbirri tutti due i fuggitiui, furono consegnati alla Corte di Monsignor Governatore di Roma, e condotti alle Carceri nuoue.

E benche sopra questo particolare faccia strepito il Fisco, che il Franceschini douesse vendicare i suoi oltraggi nell'atto del ritrouamento; per adeguata risposta si deue riflettere all'impossibilita di eseguire la vendetta per la precauzione di armi, con le quali seppe il Franceschini per il viaggio, che andauano premuniti i fuggitiui, à segno che la Donna, quando vidde il Marito, hebbe ardimento di correrli alla vita col ferro nudo, per la qual cosa fù prudente temperamento in quell'istante di assicurare la fuga, mediante l'arresto, tanto più che all'ora non era noto l'adulterio della moglie, e forse hebbe repugnanza d'imbrattarsi le mani nel sangue di colei, che haueua tenuta più volte frà le sue braccia, mentre poteua restarli viua qualche speranza di risarcire la sua reputazione per altre strade, che dell'uccisione.

Mà doppo, che furono trouate lettere delli medesimi fuggitiui scambievolmente amoroze, sfacciate, disoneste, e preparatorie alla fuga, e dall'esame del Vetturino restò palese, che per viaggio in Caleffe non faceuano altro, che baciarsi impuramente, e dal deposito dell'Oste si venne in cognizione, che haueuano dormito ambedue nella medesima Camera; e finalmente dalla sentenza, o decreto del Tribunale nella condannagione del Canonico Caponfacchi alla relegatione per trè anni in Ciuita Vecchia, *per hauer conosciuto carnalmente Francesca*, seguì la notorietà, e publicità dell'adulterio; Consideri ciascheduno, che hà sentimento di honore, in quali angustie, e agitazioni d'animo si trouasse il pouero Guido, mentre l'istessi animali irragioneuoli con la maggior ferocia, che possa suggerirli l'istinto naturale, detestano, e abominano la contaminazione della fede coniugale, vendicando non solamente l'impudicitia delle loro Compagne, con l'uccisione dell'Adultero, mà ancora gl'oltraggi, e l'ingiurie, che si fanno alla reputazione de i loro Padroni, come racconta Eliano *nel lib. 11. Histor. Animal. cap. 15. di vn' Elefante*, che vendicò l'adulterio del suo Padrone con la morte della

la moglie, e dell'Adultero trouati assieme nell'atto dell'adulterio, e vi sono anche altri simili esempi, come riferisce il *Tiraquell. in l. connub. l. 13. gloss. 1. num. 1. cum seqq.*

Ritornando alla serie del fatto, è da sapersi, che dopo la carcerazione de i fuggitiui essendo venuto à Roma ancora Guido, e stando afflittissimo, e quasi delirante per l'eccesso della sua moglie; da suoi buoni Amici fù confortato con la speranza, che questo attentato della fuga, congiunto con la mancanza della filiazione di Francesca, col di cui supposto contrasse li sponsali, hauerebbe facilitato il discioglimento del Matrimonio, e per questa strada si farebbero cancellate tutte le macchie dell'offesa sua reputazione, onde egli con tale speranza se ne ritornò alla Patria, lasciando la condotta dell'affare all'Abbate suo fratello. Testimonio ne può essere Monsignore Segretario della Sacra Congregazione del Concilio, à cui l'Abbate Paolo rappresentò il fatto con supplicarlo à voler proporre in quella Sacra Congregazione l'articolo, sopra l'invalidità del Matrimonio à suo tempo, cioè dopo, che si fosse ottenuta la sentenza criminale nel Tribunale di Monsignore Governatore.

Frà tanto l'istesso Abbate attese di proposito à sollecitare la terminazione di detta Causa criminale, e mentre Pompilia per non essere conuinta delle lettere amorose, era ricorsa al refugio di non sapere scriuere, fù facile all'Abbate poterla conuincere di questa menzogna con l'esibizione de Capitoli matrimoniali sottoscritti di proprio pugno anche da essa, e da vn Cardinale già defonto con la recognizione de' caratteri, ma ciò non ostante, essendosi diuulgati i meriti della causa da per tutto, s'accorse il medesimo Abbate, che in vece di esser compatito, à poco, à poco ogn'vno cominciava à beffarlo, e deriderlo, conforme egli riferì à più persone, forse perche sicome fù tentato in Roma d'introdurre il poter peccare impunemente contro la Legge di Dio con la Dottrina del Molinos, e col peccato filosofico, ilche fù impedito con l'autorità del S. Vfizio, così molti hauerebbero desiderato, che si scancellasse dalla mente degl'huomini l'estimazione dell'honore, e della riputazione per poter peccare impunemente

mente contro le leggi humane, e dar luogo agl'adulterij senza alcun ritengo di vergogna, e di rossore.

E però certo, che l'Abbate vedendo prolungare il proseguimento della Causa, hebbe giusto motiuo di portarsi a' piedi di Nostro Signore con Memoriale, nel quale esponeua di non potere più resistere à tante, e così varie liti, e vessationi procedenti da questo infelicissimo matrimonio, supplicandolo à destinarli vna particolare Congregazione, per tutte le Cause, cioè della filiazione, fuga, adulterio, dote, & altre dipendenti dal matrimonio, come anche sopra la di lui rescissione, mà non hauendo riportato altro rescritto, che *Ad Iudices suos*, restò con la douuta rassegnazione al Prencipe, aspettando in primo luogo l'esito della predetta sentenza criminale, dalla quale speraua potersi risarcire almeno in parte la riputatione della sua Casa.

In tanto Pietro Comparini abbondante di danaro somministratoli con larga mano da persona ignota, e forse amante della Giouane, trionfaua baldanzoso, nei circoli, e nelle botteghe, luoghi di sua solita residenza, encomiando la risoluzione, e lo spirito di sua figlia nell'hauer saputo burlare i Franceschini con la fuga vituperosa, e con la rapina delle cose più preziose, e nell'hauer trouato ripiego di dare sì belle risposte al Giudice nei Constituti col riferirne le particolarità, vantandosi ancora, che in breue sarebbe tornata à casa sua al dispetto de i Franceschini, contro i quali hauerebbe mosso tante liti, e malanni, che sarebbero stati costretti à tacere, e lasciar correre, delle quali cose se ne potranno hauere attestazioni da molte persone, quando bisognino, onde per tali pungenti iattanze, e per tanti strapazzi s'andaua sempre più esacerbando l'animo di Guido, con tutto che hauesse procurato di fare ogni sforzo per raffrenare gl'impeti del suo sdegno da tante ingiurie prouocato.

Era stata Francesca Pompilia dalle carceri trasportata preventiuamente nel Conseruatorio chiamato della Scaletta, oue si trattenne per il corso d'alcuni mesi, nel qual tempo scopertasi grauida, e fatti mol: i tentatiui per procurarne l'aborto, al di cui effetto le furono mandate più volte polueri, & altri ingredienti dalla Madre, ilche essendo riuscito indarno, fù con il pretesto di oppilazione, e necessità di purgarsi rimanda-

data alla Casa di Pietro, e Violante, douc seguì la ricognizione della grauidanza con l'accesso de i Medici: mà la verità si è, che crescendo i' vtero, non vollero le Monache, che seguisse lo sgrauio di esso nel loro recinto, e perciò fu trouato il ripiego di farla vscire à cagione della sudetta oppilazione, e del bisogno di purga.

Or quì conuenne rompere i legami della sofferenza all'Abbate, che se bene restaua offeso di riflesso, cioè nella persona, e onore di Guido suo fratello, nientedimeno pareuagli, che la fronte d'ogn'huomo fosse diuentata vno specchio, in cui rimirasse l'immagine del ludibrio di sua Casa, onde auuilitosi l'animo suo per altro virile, e costante, proruppe più volte in lagrime dirottissime di dolore fino à sentirsi sospinto ben spesso à gettarsi nel fiume, conforme palesò à tutti i suoi Amici, e per sottrarsi da sì imminente pericolo, fece risoluzione di abandonar Roma, la Corte, le speranze, gl'haueri, i suoi amoreuoli, e qualificati Padroni, e quanto di bene haueua accumulato per lo spatio di trent'anni nella medesima Città, dalla quale partitosi con quella afflizione, che ognuno puole immaginarsi, andò à ricercare vn Clima affatto ignoto, e straniero, oue non giungesse il fetore de' suoi vituperi, quantunque da esso, e dalla sua Casa non meritati.

Mà l'offesa di Guido procedendo da più acerbe, e più graui punture, internandosi nelle sue viscere come Marito, hebbe forza di eccitare lo sdegno fino all'estremo, e considerando non esser sufficiente ripiego il punir se stesso con vn volontario esiglio per i delitti altrui, mentre dal mondo poteua essere giudicata vna tal risoluzione, argomento euidente di debolezza, e viltà d'animo, e hauendo sicure notizie, che Pompilia sgrauatafi del mese di Dicembre di vn figlio machio in casa del Comparini mandato occultamente à balia, non solo manteneua l'infame corrispondenza col Canonico Caponfacchi, riceuuto (conforme è stato detto) per ospite nella sudetta casa, ma ancora, che più d'vno auoltoio si raggiraua intorno à quelle mura per giungere con augumento delle sue vergogne à mettere il rostro, e gl'artigli nella carne bramata, prouaua gagliardissime commozioni nel sangue, che lo stimolauano ad appigliarsi à ogni più disperata risoluzione.

In-

Intanto volgendo , e riuolgendo quasi delirante i suoi funesti pensieri, sù i riflessi, che si trouaua aborrito dagli Amici, discacciato da i parenti , e mostrato à dito da tutti nella sua Patria, e precorrendo la fama . che in Roma si vendeua con mercato infame la sua riputazione , la qual cosa doppo la morte di Pompilia hà dato motiuo al Fiscale delle Conuertite di mandar precetti , e pigliar possesso , aggiungendosi i continui rimproueri, che riceueua dal perduto suo honore , ebro tutto di furie, si parti di Arezzo in compagnia della disperazione , e giunto in Roma , portatosi alla Casa , che era l'asilo de suoi vituperij, non potè dubitare quanto fosse in venerazione il solo nome dell'adultero, mentre fingendo di presentare vna lettera di sua commissione, le furono subito spalancate le Porte, e posto à pena il piede nella foglia, vidde farsegli incòtro il suo disonore, che doue da lungi ne riceueua solamente le impresioni in idea, allora baldanzoso, e trionfante non hebbe timore di rinfacciarle con volto smascherato tutte l'ingiurie, che erano state commesse in quella Casa contro il suo decoro ; onde rimirando da per tutto incrostate le mura de suoi grauissimi scorni , e delle sue infamie rotti gl'argini della ragione , precipitò nel miserabile eccidio d'immergersi con funesta catastrofe nel sangue de gl'oppressori della sua reputazione.

Nè puol mettersi in dubbio, che il Franceschini habbia commesso vn'ecceso da disperato , e che la mente sua furibonda fosse totalmente destituta dell'uso della ragione , mentre hauendo perduto la robba , perduto la moglie , perduto l'onore , altro non li restaua , che perdere , se non miserabilmente la vita; perche, come dice, parlando di vn'huomo irato il dottissimo naturale, e giurista *Paolo Zacchia nelle sue questioni Medicolegali lib. 2. tit. 1. quest. 6. dopo il numero 16. Est enim impetus ille talis, ac tantus, ut omnino nihil ab insania , & furore differre , apertissime affirmauerit Galenus , soggiungendo al num. 20. ciò che de iure è noto , che i delitti commessi in tale stato si puniscono con minor pena, ancorche si trattasse del delitto atrocissimo del parricidio Calder. decis. crim. Cathalon. 43. num. 33. lib. 1. e molte altre cose al nostro proposito riferisce al num. 27. con i seguenti, e queste, proposizioni di teorica si riconoscono à pna-*

to

to in atto pratico verificate in Guido, poiche , come totalmente furioso , e priuo di senno , commise vn'attentato sì grande in hora benche notturna, frequentata molto dal popolo, dopò di cui non curandosi di alcuna precauzione, ò circospezione , con la quale ogn'altro di mente sana haurebbe procurato gouernarsi , si pose in viaggio per la strada maestra di settanta miglia in circa di confine senza preparazione di caualcature, come se fosse vn semplice viandante di ritorno di Roma, le quali circostanze come segni evidenti di mente offesa, e delirante, osserua *il Calder. nella sopradetta. decis. Cathalon. crim. 43. num. 35.* verificandosi in quest'attione quello, che scriue San Gieronimo nelle sue Epistole . *Vbi honor non est, ibi contemptus est : ibi contemptus , ibi frequens iniuria : vbi iniuria , ibi & indignatio : vbi indignatio , ibi quies nulla : vbi quies non est, ibi mens à proposito sepe deicitur .*

Nè in questo caso entra la distinzione legale , se dall'irato si commetta il delitto nel primo impeto dell'ira , ò pure con interuallo di tempo , perche questa distinzione potrebbe forsi hauer luogo , quando l'ira è nata da vn'ingiuria di fatto transitorio, e non permanente, mà quando come nel caso, di cui si tratta, l'ingiuria prouocatrice dell'ira, consiste in atti frequenti, e reiterati , cioè non tanto nel passaggio della Donna dal Conseruatorio alla Casa di Pietro con vn vano, e ridicoloso pretesto, mà di vantaggio nella permanenza in detta Casa con le circostanze aggrauanti d'infamia, come si è detto di sopra, allora , sicome l'ingiuria è permanente per li continui affronti, che l'ingiuriato riceue, così la vendetta s'intende presa in continenti, e senza alcuno interuallo, come i Signori Difensori della causa hanno iufficientemente prouato nelle loro non meno erudite , che dotte scritture , con fortissimi argomenti, e insuperabili dottrine .

Nè vale il dire , che resti aggrauato il delitto per la qualità delle armi, perche, come dice Virgilio *furor arma ministrat* , nè per la squadriglia, ò vogliam dire conuenticola, nè per il luogo , eccesso , ò altre circostanze considerate dal filco , perche in vn furioso tutto è scusabile , essendo assionna , e principio certissimo , che *natura eo modo insurgit , ut à se depellat quocumque modo potest &c.* in conformità di quello

lo dice il *Fracastoro* seguitato dal *Zaccbia loco citato n. 27.*, e in vero vn'animo ingenuo, e che fa stima del suo honore, e della sua riputazione, ogni qual volta resta offeso atrocemente in parte cotanto sensibile, e cotanto delicata, ogni qual volta giunge al termine del furore, e della disperazione, perduto ogni lume di ragione, come delirante, e frenetico, non puole appagarfi, nè meno se giugneste à sconuolgere, quando li fosse possibile, i Cardini dell'Vniuerso per annichilare non solamente gli Autori, ma ancora il luogo, e la memoria de suoi scorni, e de suoi vituperi, *quia zelus, & furor Viri non parcat in die vindictæ, nec acquiescet cuiusquam precibus, nec suscipiet pro redemptione donaplorium*, come parla in questo proposito lo Spirito santo per bocca di Salomone nei Prouerbi al 6. in fine; al che molto bene conferisce quello, che dottamente scriue *San Bernardo in Epistol. ad Robert. Ne pot. suum in princip. Dolor quippe nimius non deliberat, non verecundatur, non consulit rationem, non metuit dignitatis damnum, legi non obtemperat, iudicio non acquiescit, modum ignorat, & ordinem.*

A tal segno non vi è dubbio, che giungessi Sansone, quando caddè in potestà de suoi Nemici. Soffrì con animo intrepido la priuazione degli occhi, e altre dolenti sciagure, mà quando si vidde destinato à seruire di trastullo ne i luoghi publici, e che in quelli vdiua le derisioni, e le beffe del Popolo, s'accese lo sdegno nel suo petto, con impeto tale, che tutto smanie, tutto furie *moriatur*, disse, *anima mea cum Philistijn*, e data vna scossa alle Colonne, che sosteneuano il Palazzo, lo ridusse in ruina, *multosque plures interfecit moriens, quàm viuens occiderat*, come riferisce il Sacro Testò; e Christo medesimo, ancorche fosse mansuetissimo, e hauesse somma sofferenza nel riceuere gli obbrobrij, e gli strapazzi senza mai lamentarsi, nientedimeno, quando si senti toccato nell'honore, rispose *Honorem meum nemini dabo*; & è certo, che chiunque apprezza la riputazione, e l'honore, stima molto meno il morire huomo honorato sotto vna mannaia, che viuere per molti secoli infaccia al mondo con vergogna, e dishonore.

Questo

Questo argomento così forte ha procurato debilitare in fatto vn' accorto instigatore aderente al Fisco, hauendo procurato, che esca dalla dottissima penna di Monsignore Fiscale vn periodo, che dice: *Verum quia pro parte de Comparinis pretendebatur subministrationem alimentorum ad Franceschinum in Conseruatorio spectare, & pro parte Franceschini dicebatur ad Comparinum pertinere Illustrissimus, & Reuerendissimus D. Gubernator, habito prius consensu Abbatis Pauli germani fratris Guidonis, & Procuratoris in Causa, Domum de Comparinis eidem Francisca pro tuto, & securo Carcere sub fideiussione assignauit; ma questo fatto si giustifica chiaramente, che non ha alcuna sufficienza.*

Quando Francesca Pompilia dalle Carceri doueua condurfi al Conseruatorio, fu richiesto l'Abbate Franceschini a prouederla degli alimenti, con protesta, che repugnando, farebbe comparsa persona terza, e ignota, che n'hauerebbe assunto il peso con suo dishonore, onde l'Abbate volendo dar fine vna volta alle occasioni di riceuere nuoue vergogne, e togliere ogni attacco di conseruare ne meno vn minimo segno di attinenza con l'obbrobriosa Cognata, accettò il mezzo termine propostoli con queste circottanze, cioè che il Lamparelli come Procuratore della Carità ne hauesse fatto il prouedimento con lo sborso de proprij danari per riualesene contro chi di ragione li competeua, sicome poi se ne rimborsò sopra il danaro, che era stato trouato appresso la fuggitiua rubbato al Marito, e nella di lei cattura posto in deposito nell'Vffizio, oue ne restò anche tanto, che in fine d'ogni cosa fu consegnato il residuo al medesimo Abbate.

Quando poi dal Conseruatorio detta Francesca Pompilia fu trasportata alla Casa di Pietro, e Violante, tutte le circottanze antecedenti, e susseguenti dimostrano per molto inuerisimile, che l'Abbate vi dessi il consenso, anzi che non trouandosi negli atti oue sia registrato il detto consenso, apparisce chiaramente, che non fosse dato, e ne meno poteua legitimamente darlo, non essendo Procuratore del Fratello in questo particolare, stante che il suo mandato si restringeua solamente alla facoltà di potere ricuperare il dana-

danaro , e altro , che staua in deposito nell'Vffizio , come resta giustificato negli atti , e dal racconto , che fece l'Abbate all' hora à suoi Amici , e conoscenti , si distrugge totalmente l'assertiua del Fisco , mentre diceua essergli stato notificato , che la Giouane per necessità di purgarsi , in riguardo all' indisposizione testificata dal Medico , doueua uscire dal Conseruatorio , e portarsi alla Casa paterna , al che parendoli d'esser burlato , rispose , che si poteua commodamente adempire la purga d'vna Donna nel Conseruatorio , senza esporla à pericoli tanto evidenti di maggior vituperio , marauigliandosi molto , come in vn subito fosse ritornato l'affetto di Padre in Pietro Comparini verso Pompilia , che tante volte l'haueua negata per figlia insieme con la Moglie , e come potessero i medesimi essere , e non essere Genitori di detta Donna , secondo i loro desiderii in pregiudicio della Casa Franceschina .

E se bene l'isigatore , per colorire l'honestà di detta Donna , hà mendicato diuerse giustificationi , è da notarsi , che in sostanza tutto quello , che si dice in questo proposito è fondato in ciò , che con la propria bocca in fauore di se stessa , e per discolpa de suoi mancamenti hà proferito la Donna , tanto in questa congiuntura , quanto in quella della fuga , come nel Processo da riuadersi , costando in fatto tutto il contrario , con aggiungerui le proue esteriori , che voleuano fare le Conuertite , dalle quali si astennero hauuta la notizia del Parto del figlio maschio ; e piacesse à Dio , che ella hauesse offeruate le Leggi della santa honestà , che da suoi capricci non sarebbe succeduto eccidio così grande . Auuertendosi in oltre , che l'asserta dichiarazione fatta dalla Donna in articolo di morte puole essere equiuoca in se stessa con il senso , che doppo la Confessione , & Assoluzione Sacramentale resti cancellato il peccato , come se mai fosse stato commesso , in modo che in foro poli non habbia più bisogno di perdono ; onde da tutte le sopraccennate circostanze , e ragioni validissime , non vi è da dubitare , che il Franceschini sia meriteuole del comparimento , che danno le Leggi , per causa degli eccessi , che traggono l'origine da gli stimoli dell'honore ; e quando mai fossimo ne i termini , che questa causa douesse essere giudicata coll'*expedis* , dourebbe senza difficoltà

ficoltà essere punito leggiermente il Franceschini, per rintuzzare l'orgoglio all'Impudicitia, e alla Sfacciatagine, che come Donne non mancandogli seguaci, trionfano per tutta Roma, in compagnia del Tradimento, tanto in publico, quanto in privato, con oppressione, e derisione dei Mariti, che fanno stima della loro riputazione, dando titolo di *freddure* aile circospezioni, che si deono hauere per la conseruazione del proprio Decoro.

S V M M A R I V M

Die 12. Octobris 1697.

Num. 1.

*Obligatio emissa à
Francisca Pompilia
de habendo Domū
pro Carcere.*

IN mei &c. D. Francisca Pompilia Vxor D. Guidi Franceschini de Aretio in eius libertate posita &c. promisit &c. habere hanc Domum D. Petri q. Francisci Comparini &c. sitam in via Paulina pro tuto, & securo Carcere, & ab ea non discedere, neque de die, neque de nocte, etiam ianuis, & fenestris apertis, sub quouis prætextu &c. etiam animo redcundi &c. & se præsentare &c. postquam conualuerit, ac toties quoties &c. ad omne mandatum Illustrissimi, & Reuerendissimi Domini &c. Almæ Vrbs Gubernatoris *pro causa de qua in actis &c.* etiam nouis, vel non nouis superuenien. indicijs sub pœna sc. tercentorum Reu. Cam. Apostolicæ applican. in casu &c.

Sequitur fideiussio in forma.

Charitas Notarius.

Fidem facio ego infrascriptus &c. qualiter in libro Baptizatorum fol. 152. reperitur infrascripta particula videlicet Die 23. Iulij 1680. Ego Bartholomæus Minius Curatus Baptizauit infantem natam 17. huius ex D. Petro Comparino &c. & ex D. Violante Peruzi Coniugibus degen. in hac Parochia, cui nomen impositum fuit Francisca, Camilla, Victoria, Angela, Pompilia &c. In quorum fidem &c. Romæ hac die 9. Februarij 1698.

Ita est Petrus Orthobonus Curatus S. Laurentij in Lucina.

Cari miei Genitori.

Vi fo sapere, come io sono qui in Castel nouo carcerata per esser fuggita con vn Signore, che voi non conoscete, ma è Parente del Belichini, che sù à Roma, che haueuo à venire con lui, ma per essere ammalato non hà potuto venire, ma è venuto quest'altro, & io sono venuta con questo, perche
la

Num. 2.

*Fides Baptismi
Francisce Pompilie.*

Num. 3.

*Epistola Francisce
Pompilie scripta
in Carceribus Ca-
stri noui suis Geni-
toribus.*

la mia vita era a bore , perche Guido mio Marito mi voleua uccidere , perche haueua certi suoi sospetti non veri, e per questo mi voleua uccidere , & Io vi mandai quelli apposta , e voi non credeui , che fosse mia mano quelle lettere , che vi mandai , ma vi dico , che Io hò finito d'imparare di scrivere in Arezzo , però vi dico , che questo , che ve la porta s'è mosso a pietà , e mi hà dato la carta , e quello mi hà bisognoato , però voi subito , che hauete letto questa mia , venite quì in Castel nouo per darmi qualche aiuto , che mio Marito mi fa contro , quanto puole , però se voi volete la vostra figliola , venite subito , e resto perche non hò più tempo li 3. Maggio .

Foris -- Al Sig. Pietro Comparini mio Padre alla strada, Vittoria . Roma .

Num. 4.

Alia Epistola eiusdem in qua obiurgatur Canonicus de inhonestate.

Rendo infinite grazie dell'ottaue , che mi hauete date , quali sono tutte al contrario della Rosalinda , che tanto è honesta quella , tanto e lasciaua questa , e mi marauiglio , che voi che sete tanto casto , haete composte , o copiate cose tanto poco oneste &c. ma io non vorrei , che voi faceste così in ogni cosa , come haete fatto in questi libri , che il primo è stato tanto onesto , e queste ottaue tutte il contrario , che voi da tanto onesto , che sete , diuentate tanto ardito , il che non credo &c.

Num. 5.

Partitula Testamenti Petri Comparini .

In tutti , e singoli miei beni &c. mia Erede vsufruttuaria, istituisco la Signora Violante Peruzzi mia Conforte &c. E morendo detta Signora Violante sostituisco nel detto vsufrutto della mia vniuersale Credità Francesca Pompilia moglie del Sig. Guido Franceschini d'Arezzo , e questa sostituzione la faccio per li suoi buoni costumi , e per hauer'essa vissuto in buona fede per molto tempo , & anni d'esser mia figliola , sì come della Signora Violante mia Conforte , & io d'essergli Padre , ritrouandosi tanto essa medesima , come Io in tal credulità ingannati , mercè alla vanità de pensieri malamente esaminati dalla detta mia Conforte con hauermi supposto il Parto della medema , e da detta Signora Violante mia Conforte per scrupolo di coscienza scopertomi dopò il Maritaggio di Francesca Pom-

Pompilia medesima, e da me riconosciuto esser vero Parto supposto con le notizie presene da persone d'integra fede. *Con conditione però, che detta Francesca Pompilia debba ripatriare, e dimorare in Roma sua Patria &c. nella quale Città spero viuerà castamente, & onestamente, e da buona Cristiana, e non ripatriando, ò ripatriando viuendo con sfacciata impudicitia (che Dio non permetta) voglio, che decada dall'usufrutto di detta mia Eredità, e sia fatto luogo alla sostituzione a fauore dell'infrascritto mio Erede proprietario &c. perche così &c. e non altrimenti &c. E perche potrebbe darsi il caso, che rimanesse Vedoua, ò si dissoluesse il Matrimonio, stante la lite, che verte auanti Monsignor-Illustrissimo Tomati per l'atti dell'Oliuieri della sua filiatione, però volendo detta Francesca Pompilia rimaritarsi, ò farsi Monaca, in tali casi, ò caso, voglio, che si possa smembrare dalla mia Eredità sino alla somma di scudi mille moneta ad effetto, che si possa rimaritare, ò monacare, se gli piacerà, *insinuandola non rimaritare* per non soggiacere al secondo, ò ad altri inganni, dandoli in oltre facultà di poter testare sino alla somma d'altri sc. duecento moneta della mia Eredità, & in euento, che premorisse detto Sig. Guido alla detta Francesca Pompilia &c. per il che ne venisse la restituitone del denaro da esso Sig. Guido riceuti in somma di sc. settecento in circa &c. che lo stimo se non impossibile, almeno difficilissimo per esser detto Sig. Guido miserabilissimo, e la sua Casa assai pouera, voglio non gli si computino alla detta Francesca Pompilia nelli detti sc. 1000., ne tampoco nella facultà di testare perche così &c.*

Num. 6.

Die 7. Octobris 1694. D. Guidus q. Thomæ de Franceschinis de Aretio sponte &c. fecit, & constituit &c. eius verum &c. Procuratorem &c. specialem, & generalem &c. ita tamen &c. D. Abb. Paulum de Franceschinis eius germanum fratrem Romæ degentem &c. ad eius, & nomine dicti D. Constituentis, & pro eo agendum, & defendendum omnes lites, & causas ciuiles, & mixtas motas, & mouendas qualibet de causa, & contra quoscunque vbi que locorum, & signantèr Romæ tam actiue, quàm passiuè coram

*Mandatum procura-
re factum à D. Gui-
done Franceschino
in personâ D. Abb.
Pauli eius fratris.*

coram quocunque D. Iudice tam Ecclesiastico, quàm
sæculari, Congregatione, seu Tribnnali, & coram eo, vel
eis libellum dandum, excipiendum, litem contestandum,
iurandum de calumnia, & quodlibet aliud licitum Iura-
mentum præstandum &c. ac omnia, & singula alia acta
opportuna, & necessaria gerendum, & procurandum eo
modo, & forma, & prout facere posset d. Constituens, si
præsens esset, & dicto Procuratori &c. liberè videbitur, &
placebit &c. promittens &c. rogans &c.

Ego Ioseph &c. de Riccij Notarius publicus &c. Arc-
tinus rogatus &c. in fidem &c.

Illustriss. & Reuerendiss. D.

Vrbis
G V B E R N A T O R E

In Criminalibus.

Romana Homicidiorum.
cum qualitate.

P R O

Fisco.

C O N T R A

D. Guidum Franceschinum, & Socios.

Summarium.

ROMÆ, Typis R. Cam. Apost. 1698.

Romana Excidij.

Ill.^{me} & Reu.^{me} Dñe. **A**D quid tempus tere-
re in disputatione
 articuli, an Adulterium, quòd prætenditur exaduerso Com-
 missum à Francisca de Comparinis cùm Canonico Caponfaca
 sit sufficienter iustificarum, dum nos in prima nostra facti,
 & Iuris informatione diximus resolutum solum fuisse in Con-
 gregatione prò pœna Relegationis in Ciuitate Vetula aduer-
 sùs præfatum Canonicum, & retentionis in Conservatorio
 eiusdem Franciscæ ob defectum probationis dicti Adulterij,
 & Iure meritò, quia nec ipse Canonicus nèc dicta Francisca
 sunt confessi, minusquè conuicti, & quia præsumptiones ex-
 aduerso desumptæ sunt leues, ac equiuocæ; quamuis etiam
 si essent graues atquè vrgentissimæ non sufficerent ad consti-
 tuendam Concludentem probationem, sed ad summum in-
 ducere possent animum iudicis ad aliquam pœnam leuem, ac
 arbitrariam imponendam, vt testatur *Farinacc, de Comuni*
DD. opinione quest. 136. num. 24.

Strictè ideò insistendum solum venit prò parte Fisci non licuisse
 Guidoni Franceschino vxorem non deprehensam in Adulte-
 rio, ac in actibus venereis, & ex interuallo occidere absquè
 incurso pœnæ ordinariæ *l. Cornel. de Sicar.* prout Maritum
 occidentem vxorem ex interuallo à dicta pœna non excusari
 probauimus ex multorum insignum DD. auctoritate in priori-
 bus scriptis *S. Alij verò.*

Quo iacto fundamento diximus Iura Fisci controuerti minimè
 posse in Casu, de quo agitur, dùm DD. exaduerso allegati ex-
 cusantes à pœna ordinaria Maritum loquuntur in Casu sim-
 plici, qui proindè extendi non debent ad Casum qualitatibus,
 ac circumstantijs valdè grauatum, ea ratione, quia non po-
 test eadem esse pœna, quando maius delictum est in vno Ca-
 su, quam in alio iuxta *Text. in l. final. ff. de Calumniat. Bald in*
l. cum proponas num. 12. Cod. de Nautico fenore, quòd in nostris
 præcis terminis etiàm comprobauimus auctoritate *Laurent.*
Matheu de re Criminal. controuers. 12. num. 29. vers. Ex qui-
 bus.

Nèc ad posternendum hoc Fisci fundamentum obijci valet, quod
 omnes qualitates, & circumstantiæ, quæ pro parte eiusdem

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Fisci

Fisci cumulatæ fuerunt tanquam tendentes , & præordinatæ ad finem in mente propositum non sint habendæ in consideratione cum finis, & intentio d. Guidonis Franceschini tenderet ad occidendam uxorem, & ad vindicandum eius honorẽ, quia quantum fallax sit hoc argumentũ satis comprehendi potest ex iam scriptis per nos in *S. Prima enim cum S. seq. & in S. secunda qualitas, cum S. si ergo*, ubi probauimus, quod auctoritates Doctor. qui possent ex aduerso adduci loquuntur, & intelligi debent, quando finis est licitus, nec a lege prohibitus, vel quando per particulares Constitutiones, ac Bannimenta qualitas, ac circumstantia non constituat delictum capitale prorsus distinctum, & separatum, siue sequatur, siue non sequatur id quod fuit in mente delinquentis præordinatum.

In nostro casu ex concessis per DD. meos Defensores non est licitum, nec a iure permillum marito impunẽ uxorem pro Adulterio ex interuallo occidere, sed solum a iure eidem permittitur Adulterum vilem, & Adulteram uxorem in Adulteria deprehensam morti tradere; quomodo ergo applicandæ sunt nostro casui DD. auctoritates, quæ procedunt, & sibi locum vindicant in casu a iure permisso, in quibus terminis loquitur *Laurent. Maisben ex aduerso allegatus contr. 11*, ubi in figuratone casus legitur Adulterum, & Adulteram fuisse morti traditos in domo mariti, quamuis in illo casu maritus, non impunitus euaserit, eo quia usus fuerit armis igneis.

Neque subsistit in iure, & in praxi, quod delatio armorum confundatur cum delicto patrato, Non in iure, ut iam firmavimus in alia *S. si ergo, vers. Certius*, nec in praxi, quia in omnibus tribunalibus totius status Ecclesiastici seruat, quod secuto homicidio etiam rixoso si illud fuerit commissum cum armis deferri prohibitis sub poena capitali, præsertim si dicta arma ad manus Curie peruenerint accipitur, pœna maior, & homicida qui ob homicidium rixosum in pœnam extraordinariam damnari deberet in pœnam ordinariam ob dictam armorum delationem damnatur, prout de hac praxi in statu Ecclesiastico vigore Bannimentorum testantur *Farinas, quest. 108. num. 168. & seqq. Guazzin. defenf. 29. num. 18. vers. qua opinio*.

Minus applicantur cæteræ Doct. auctoritates adductæ ad elodendam dispositionem Constitutionis Alexandrinæ, quia licet

cet verum sit, quod ad hoc ut intret poena ab ipsa conflictatione comminata debeant tria concurrere, nempe dolus causa litis, & quod nulla interuenerit prouocatio, ut tradit *Farinacc. in cons. 67. num. 1.* ceterique ab eo citati, attamen in nostro casu praedicta omnia concurrunt; de dolo enim dubitari minimè potest, dum ex propria confessione Reorum habemus praecedentem tractatum, & deliberationem homicidia committendi, ex quo tractatu praecedenti dolum oriri firmiter *Decian. cons. 32. num. 15. lib. 3. Mascard. de Probat. lib. 1. conclus. 531. num. 73. & seq. Menoch. de praesumpt. lib. 5. praesumpt. 3. num. 110. Farinac. quaest. 89. inspect. 4. num. 97.*

De Causa litis pariter non est ambigendum, quia ob praetensionem Petri de Comparinis super dote promissa, quoad Bona fideicommissa subiecta ad exclusionem dd. Guidonis Franceschini, & Franciscae eius Vxoris, non solum inchoatum fuit iudicium, coram A.C. Thomato, sed etiam ab ipso iudice fuit prolata Sententia favorabilis eidem Franceschino.

Quod autem prouocatio ex qua motus fuerit Franceschinus ad occidendum propriam uxorem processerit ex Causa praetensi Adulterij habemus ex confessione ipsiusmet Franceschini super qua Domini mei Defensores principaliter insistant quam Causam cum negare minimè possint fuisse introductam Criminaliter coram Iudice ab eodemmet Franceschino, tateri per necessitatem oportet sibi locum vindicare Bullae Alexandrinae dispositionem, quae loquitur tam de Causis Civilibus, quam Criminalibus, ut videre est in § Quarto eiusdem Bullae, ibi -- *Quod deinceps perpetuis futuris temporibus, omnes, & singula Ecclesiastica, Secularesq; personae cuiuscumque qualitatis, dignitatis, status, gradus, ordinis, & praeminentia fuerint, quae earum in Causis, tam Beneficialibus, quam profanis, ac Criminalibus, siue mixtis in dicta Curia nunc, & pro tempore pendentibus Aduersarios, vel illas prosequentes, & procurantes, siue Aduocatos, aut Procuratores ipsorum &c. & ibi -- si mutilatio membri, vel mors, quod Deus auertat, subsequatur, ultra Causa, & Iuris amissionem laesa Maiestatis Criminis sententias incurrant ipso facto.*

Et haec currenti calamo propter angustiam temporis trium horarum exarata sufficere credimus ad clarius demonstrandum fun-

fundamenta Fisci in prioribus scriptis firmata subsistere non
obstantibus exaduerso latè, & eruditè, sine tamen legitima
probatione deductis,
Quare &c,

**F de Gambis Fisci, & R. C. A. Proc.
Generalis.**

Illustriss. & Reuerendiss. Dño

Vrbis

GVBERNATORE

In Criminalibus.

Romana Excidij.

P R O

Fisco .

C O N T R A

**D. Guidonem Francischinum, & Socios
Carceratos .**

**Responso Dñi Procuratoris Fiscalis
Generalis .**

ROMÆ, Typis R. Cam. Apost. 1698.

Romana Homicidiorum .

Ill.^{me} , & Reu.^{me} Dñe. **R**edarguit D. meus Pauperum Advocatus in principio suæ nouæ Informationis Decretum huius supremi Tribunalis super Tormento Vigilæ D. Guidoni Franceschino, & locijs inferendo pro habenda confessione immanissimi sceleris ab ipsis patrati tanquam iniustum, exindeque confessiones illius metu emanatas, & eo cessante ratificatas, ve moris est, eisdem nocere non posse infert; Iniustitiam verò dicti Decreti desumere conatur nedum ex defectu qualitatis atrocissimæ per constitutionem sel. rec. Pauli V. super reformatione Tribunalium Urbis requisitæ, sed etiam ex quo non posset irrogari poena mortis pro Crimine, de quo agitur, & ita nec etiam ex facultaribus extraordinarijs huic Tribunali concessis decerni Tormentum vigilæ, nè maior sit asperitas in procedendo, quàm in condemnando, vt monet D. Canonicus *Raynald. obseruat. part. 1. cap. 5. §. 1. ad tertium num. 121. & seq.*

In sine verò dictæ nouæ informationis me quoque redarguit, eo quòd cum summa ipsius, & aliorum admiratione mei muneris obligationi, veritatem scilicet quærendi, detecerim, conficiendo allegationes pro tuendis iuribus Fisci eidem non communicatas, de quo satis ipsum optentis conquestum existinabam, vt nouæ quæretæ parcere potuisset, cum meum non sit illas communicare, prout mihi nunquam ab eodem, quas ad defensam conficit, doctissimæ demore informationes communes fiunt; Quod solum innuere operæ pretium duxi, nè meo muneri, & obseruantia, qua Dominum meum prosequor, defecisse videar.

Præmissa propterea propria apologia, transeo ad vindicandum ab obiecta iniustitia decretum huius Tribunalis, & omisso indagine qualitatis Criminis: An scilicet reputari valeat atrocissimum, de quo ad abundantiam disserui in præterita responsione *S. Sed quatenus etiam cum sequen. ostendendo eam* sustineri posse ob qualitates illud exasperantes, & extollentes ad læsæ maiestatis delictum, ex dispositione Constitutionum Apostolicarum, & Generalium Bannimentorum, satis esse censeo in præsentii ostendere, quòd pro illo poena mor-

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tis

eis sit Irroganda , quod facili negotio euincere spero , dum ex ipsa iam decreta per integerrimos Iudices acerbioris Torturæ specie , dictæ quoque pænæ locum esse præsupponendum est , itaut cum nihil noui tam in facto , quàm in iure deducatur , quod non fuerit priùs in relatione Causæ pro decernenda Tortura examinatum , superuenta Reorum confessione Iudicum partes sint executionem pænæ promeritæ ab omnibus iam diù expectatæ pronunciare :

Dixi nil noui afferri per DD. Defensores , cum præcipuus eorum conatus consistat in repetenda causa honoris ob prætentum adulterium patratum ab Vxore D. Guidonis , conspirantibus , & adiuuantibus eius Genitoribus barbarè cum ipse trucidatis ad excitandam Illustrissimi Domini mei , ac DD. Iudicum commiserationem , ut mitiùs tam ipse , quàm Socij puniendi sint , ex auctoritatibus pro eo adductis in prima informatione *S. Hoc stante cum seq. & S. Prædictis nullatenus pariter cum seq. & in presenti S. Verum , & socios* ; sed eadem recurrit responsio , quod nullum Reis præsidium afferre valet exceptio prætentæ causæ honoris ob eius insubstantiam in facto , & irrelevantiã in iure .

Quid quid enim sit an ad excusandam vindictam incontinenti sumptam à viro contra Vxorem , vel Amasium , sola vehemens suspicio adulterij sufficiat ex quo illa reperta sit in actibus Venereis vel præparatorijs ad illud , quia tunc ob incon-sultum dolorem ad iram prouocantem ab illa excitatum , pænã plurimum est temperanda iuxta qualitatem casus atque personarum , certum est , quod ad effectum vitandi pænã ordinariam legis Cornelie de Sicar. pro nece Vxoris ex intervallo patrata , sola suspicio quantumcunque vehemens non sufficit , sed requiritur eius liquidissima probatio , vel ex confessione ipsius Vxoris , vel sententia condemnatoria resultat , ut præter adductos in mea præterita responsione *S. Solamque suspicionem* , admittunt per Dominos Defensores laudati *Mascard. de probat. tom. 1. concl. 64. verb. Adulterium num. 8. et 9. Bertazzal. conf. 42. num. 1. vers. Quod autem , Caball. resol. Crim. cas. 300. num. 26. Matth. Sanz. de re Crim. contr. 2. numer. 15. Dexart. decis. Sard. 5. pariter num. 15.*

Talis autem probatio deficit omninò in casu nostro ; Nam infelix Vxor Adulterium vsque ad extremum vitæ spiritum constantissimè negauit , ut constat ex attestacionibus iuratis Religio-

ligiosorum Virorum, & aliorum, qui eidem lathaliter vulneratæ ministrabant, vnanimiter asserentium, ipsam semper affirmasse, quod nunquam Coniugalem fidem violauerat, nec tale peccatum sibi à Diuina Clementia remitti exposcebat, quæ profe&ò assertio plurimi facienda est, cum nemo decedere præsumatur immemor salutis æternæ, vt vltà relatos in præterita informatione §. *Omneque: tradunt Menoch. de præsumpt. lib. 5. præsum. 5. numer. 3. Farin. de hæresi quest. 196. num. 31. Decian. tract. Crim. lib. 5. tit. de defens. Reor. cap. 37. num. 27. Card. de Luc. de Regal. disc. 119. num. 24. & de legat. disc. 27. num. 10.*

Non relevantibus responsionibus traditis per DD. Defensores, quod scilicet huiusmodi probatio exclusiua adulterij solum defumatur ex fidibus extraiudicialibus, lite pendente extortis ab hærede pro remouendis molestijs illatis à Monasterio Conuertitarum, & quod aliqui subscripti in iisdem sint legatarij; Cunque talis assertio tendat ad regendam propriam turpitudinem non sit attendenda; Præsertim cum non sit iurata, & licet nemo præsumatur immemor salutis æternæ, non tamen omnes præsumuntur esse immunes à peccato, sicut S. Ioannes Baptista, & maximè quotiès agitur de præiudicio Tertij, & de grauius inimicum declarantis puiendo.

Quoniam omnes facili negotio dissoluuntur; Informatas quippe probationis obitare posset, si Fiscus teneretur eam assumere, & perfectam exhibere; At cum tale onus Reo incumbat ex supra traditis pro vitanda pæna mortis, quotiès Vxorem ex interuallo necauit, & tales attestaciones solum adducantur ad offuscandum probationem prætenſi adulterij per illum adductam, in hoc certè casu spernendæ non sunt, præsertim attenda qualitate attestantium, cum sint Religiosi notæ probitatis, quos, credibile non est, mentiri voluisse, vt per Text. in cap. Si Testes 4. quest. 3. cap. In nostra de Testib. tradunt Alex. conf. 43. num. 4. vol. 7. Crauess. conf. 267. num. 2. vol. 1. Menoch. conf. 221. num. 3. lib. 3. Farinac. de Testib. quest. 70. numero 471. Bellef. disquis. Cleric. part. 1. tit. de Clerico Teste §. 1. num. 1., & seq.

Eademque replicatione tollitur exceptio, quod extortæ fuerint per hæredem, lite pendente pro remouendis molestijs illatis à Monasterio Conuertitarum, quia cum agatur de probandæ assertione emissa in vltimis diebus vitæ atque in articulo mortis,

tis, non poterat, nisi ea secuta, institui probatio, & laudandus est heres, qui tenetur necem defuncti vindicare, nè indignus reputetur, *ut per Text. literalem in leg. 1. C. de ijs, quibus ut indignis ibi -- Heredes, quos necem Testatoris inulta non omisisse confiterit, fructus integros cogantur reddere &c. mo-
nent Angel. ibidem num. 2. Bartol. num. 1. & 5. Castren. numer. 1. Iason. num. 1.* si dictas attestaciones procuravit, ut saltem famam Testatricis tueatur, quò potiùs tendebat eius studium, quàm ad arcendas molestias indebitè illatas, & quarum ipsa cessatio retorqueri potest ad exclusionem præsentis probationis inhonestatis infelicis Vxoris.

Miusque obstare valet, quod aliqui ex subscriptis sint legatarij, cum eorum interesse non sit ad eò considerabile, ut a testimonio ferendo repellantur, ut monent *Herculan. intract. de negat. num. 215. Lamberteng. de contract. glos. 10. num. 4. Boss. in tit. de opposit. contr. Test. num. 123. & seqq. Mascard. de probat. lib. 1. concl. 318. num. 4. & lib. 3. concl. 1357. n. 69. & seqq. Osasch. decis. Pedemont. 99. num. 13. & 38.* Præsertim quotiès agitur de probanda re, quæ contigit intra domesticos parietes, & cuius propterea probatio difficillima reputatur, ut aduertit *Alex. conf. 64. numero 1. lib. 1. Farinac. de Test. qu. 6. num. 58. & seqq.* cum ibi adductis; Talisque exceptio, quatenùs subsisteret, suppleta remaneret ex numero aliorum Testium in dd. attestacionibus subscriptorum, ut tradunt *Angel. in L. qui Testamento num. 3. ff. de Testam. Camppeg. de Test. regul. 75. in prima fallen. Farinac. dict. qu. 70. num. 63. Rot. coram Royas dec. 353. num. 5. & 6. & dec. 466. num. 8. & coram Buratt. dec. 143. numero 38. & coram Merlin. dec. 277. num. 11.*

Exceptio verò quod assertio morientis, ut potè tendens ad propriam exonerationem non sit attendenda, quia nemo cogitur propriam turpitudinem detegere, forsan procedere posset si probatum fuisset Adulterium, & non constaret, vulneratam obijisse cum maxima Christianæ compunctionis manifestatione, quæ mendacij suspicionem excluderet, quo casu ea non procedit, sed succedit alia validissima præsumptio, quod nemo credatur, velle mori salutis æternæ immemor, ut monet *Mascard ex adverso adductus de probat. conclus. 144. num. 2.* ubi respondet *Baldo in contrarium pariter allato in Tit. De pace constantiæ verbo Vassalli in v. sib. feud. afferenti, quòd non om-*

omnis, qui moritur, est S. Ioannes Euangelista, ostendendo, quod ipse est sibi contrarius, dum in *conf. 25. lib. 1.* ait, confessionem emissam in articulo mortis valere, subditque, id ad veritatem proprius accedere, adducendo in comprobationem, *Marfil. conf. 5. numero 14. & 15. lib. 1. & Anchar. conf. 151.* affirmantem, ut si quis assereret, constitutum in articulo mortis mentiri, diceret non verisimile, & concludit, hanc opinionem esse magis æquam, & rationi, ac luri naturali magis consentaneam, & licet aliquas afferat limitationes, nulla tamen casui nostro adaptatur, & quæstio, de qua ipse agit, procedit in assertione vulnerati, an faciat indicium contra inculpatum, quæ roto cœlo a nostra disputatione distat, cum ut observatum est, Fisco non incumbat onus probandi, nec assertio nostræ morientis principaliter tendat ad vindictam, cum ex dd. attestacionibus constet, ipsam ab eadem abhorruisse, ut semper profiteretur se libentissimè viro parcere.

His potius ad abundantiam, quàm pro asserenda Iustitia decreti huius Tribunalis, necessitate exposcente prænotatis, facile erit prætensi Adulterij probationem per DD. Defensores adductam elidere; Nam quatenus ea desumitur ex alio Decreto eiusdem Tribunalis condemnatorio D. Canonici Caponsacchi pro fuga, & cognitione carnali Franciscæ Pompiliæ, subsistit responsio tradita, quod non sit attendendus Titulus, sed probatio ex Processu resultans, & pœna per sententiam imposita. Adeoque licet in Decreto, vnâ cum titulo complicitatis in fuga, & deviationis d. Franciscæ Pompiliæ additus fuerit etiam Titulus cognitionis carnalis eiusdem; Attamen dum in Processu non reperitur probatio illius verificatiua, eique pœna triennis relegationis non correspondet, remanet propterea nudus Titulus non attendendus ex auctoritatibus adductis in præterita responsione S. non relevante.

Eoque minùs ex illo resultare valet probatio, adeò clara prætensi Adulterij, prout requiritur ad euadendam pœnam ordinariam pro vindicta ex intervallo sumpta, dum ad instantiam D. Procuratoris Charitatis fuit per DD. Iudices, approbante Illustrissimo D. meo, decreta correctio, subrogando generalem Titulum ad Processum relatiuum, scilicet: *Pro causa, de qua in actis*: quæ correctio, licet non legatur in libereculo, in quo adnotantur resolutiones vulgò *Vacchetta*,

tamen facta fuit in schedula transmissionis ad relegationem , & in decreto assignationis Domus loco carceris *Summ. no. 1.* quæ cum facta sit de consensu D. Abbatis Pauli Franceschini eidem propterea innotuisse d. mutationem, asfirmandum est ob notoriam illius sollicitudinem in huiusmodi Causa promouenda, itaut prorsus inuicissimile sit, ipsum non perstrasse tale decretum, & obligationem factam a Petro, subministrandi alimenta, absque spe illa repetendi, ac fideiussionem præstitam de habendo domum pro carcere, ex quibus scientia eiusdem sufficienter probata censeri debet, ut firmavit *Rot. coram Bich. decis. 30. num. 30. & seqq. [& coram Cels. dec. 152. num. 6. & coram Cerr. dec. 34. num. 40. & coram sa. mem. Alex. VIII. dec. 269. num. 11. & dec. 398. num. 11. par. 18. rec.*

Exindeque corrui responsio, quod non potuisset mutari Decretum, vtraque Parte non audita; Quia multò minùs inaudita Francisca Pompilia, quæ suas adhuc defensiones non confecerat, poterat in condemnatione D. Canonici admisceri titulus cognitionis Carnalis ei aded præiudicialis, nedum quoad existimationem, sed etiam quoad amissionem dotis, cui præcipuè maritus inhiabat, irà enim indefensa mulier condemnationem passa fuisset, & quod peius est, ut ostendit euentus, exposita remanebat furori viri. Ac proinde talis correctio, iustitia distante, merito impetrata, & executioni demandata fuit, & quatenus etiam non contigisset, non poterat sententia contra D. Canonicum lata eidem nocere, tanquam res inter alios acta, ut per *Text. in L. De unoquoque, & in L. Sape ff. de re indic. firmavit Rot. coram Duoz. Lun. dec. 797. num. 4. & in rec. dec. 392. num. 5. par. 18.*

Quod autem mutatio per relationem ad acta idem importet, ac expressio tituli cognitionis carnalis, gratis omninò asseritur, cum enim plures tituli priùs in decreto condemnationis expressi fuissent, scilicet complicitas in fuga, deviatio, & cognitio carnalis, super quibus constructus fuerat Processus, expressio causæ in eo contentæ non est potius de vna, quàm de alia verificabilis, & certè non de omnibus, quia si voluissent omnes in Decreto reformatorio comprehendi, dictum fuisset -- *Pro causis, de quibus in Processu, cum numerus singularis pluribus non conueniat, ut tradunt Surd. conf. 396. num. 9. lib. 3. Palm. Nep. alleg. 120. num. 6. lib. 2. Rosa coram Greg.*

Greg. dec. 433. num. 7. & in rec. dec. 252. num. 10. par. 19. Sed quia in Processu non erat verificata causa cognitionis carnalis, vel pro illa damnari non poterat D. Canonicus, inaudita, & indefensa Francisca Pompilia propter indiuiduitatem criminis Adulterij, quod non patitur scissuram per condemnationem vnus causa pendet quoad alium, & praesertim dum omnes sunt praesentes, & in carceribus constituti, vt monet *Text. in L. denunciaste §. fin. ff. de Adulter.*, Alberic. *ibid. §. quaritur num. 6. vers. sed responderi potest ff. ad leg. lul. de Adulter. Salicet. in L. Reos num. 1. vers. Hic vero, & num. 3. vers. Item prodest Cod. eodem titulo, Ciriac. contr. 354. num. 21. Granett. conf. 206. num. 2. Origlia ad Campan. obseru. ad resol. 24. & 25. num. 56. & seq.* expressio propterea Cause, de qua in Processu, solum intelligi debet de complicitate in fuga, & deniacione, quae poterat expediri, absque condemnatione Franciscae Pompiliae, non autem de complicitate carnali, cum relatio facta censenda sit ad ea tantum, quibus dispositio relatiua congruit, vt firmanr *Granett. conf. 548. n. 21. Surd. conf. 431. num. 64. Menoch. conf. 420. num. 78. & conf. 399. num. 48. Alsograd conf. 48. num. 28. lib. 1. Rocc. disput. Iur. select. cap. 42. num. 40. Rota dec. 238. num. 4. par. 3. rec.*

Idque manifestum redditur ex leuitate poenae, ad quam damnatus fuit D. Canonicus, scilicet triennalis relegationis, quae certè non correspondet deuiationi mulieris nuptae a Domino viri, eiusque traduioni ad urbem, & carnali cognitioni, quoniam circumscripta etiam qualitate Raptus capitali poena puniendi, nisi ageretur de persona Ecclesiastica, pro solo Adulterio longè grauior infligenda fuisset, si eius probatio ex Processu resultaret, vt ex *Text. in cap. si quis Clericus dist. 81. tradunt Abb. in cap. vt Clericorum num. 8. de vita, & honestate Cleric. Menoch. de arbitr. cas. 419. num. 60. Diaz. in prax. crim. canon. cap. 87. Decian. tractat. crim. lib. 6. cap. 23. num. 14. Bellest. disquis. Cleric. par. 2. §. 7. num. 3.*

Agnoscit D. meus Pauperum Aduocatus, nimis imparem esse poenam delicto acerrimè expiando, & praesertim post renouatam Sixtinam Constitutionem a sa. me. Innoc. XI. ac propterea ad euitandum defectum probationis eiusdem ex leuitate poenae Iure optimo arguendum, respondere conatur, quòd miriùs actum fuerit, cum D. Canonico, quia ipse erat forensis, & agebatur de delicto commisso extra Statum Ec-

ecclesiasticum, quo casu cum solo exilio dimittendus erat, sed responsio ex pluribus insubstans detegitur,

Primò quia ex notorio privilegio urbis Romæ, quæ Patria communis est, possunt in ea puniri etiam ij, qui extra statum Ecclesiasticum Pontificiæ potestati sæculari subiectum deliquerunt, & quidem non pro sola contrectatione, quòd cuilibet Principi licet, sed pro ipsiis delictis, ut ex *Text. in l. Romæ ff. ad municipal. in terminis firmans Oldrad. conf. 124. per totum Marsil. conf. 99. num. 21. Petr. Barbos. in Tit. de Iud. ad L. secundam §. legati num. 18. & seqq. Castald. de Imper. qu. 77. num. 7. & 8. Boss. in tit. de for. competen. num. 75. Cyrill. in Sum. crim. tit. ubi de crimin. agi oport. num. 18. ubi testatur, se ita servasse de anno 1540. in foro Capitulino, Farinac. de Inquisit. qu. 7. num. 12. vers. hac questio, ubi quod in hac eadem Curia de anno 1580. fuit ad triremes condemnatus Georgius Corso, qui Florentiæ homicidium commiserat, & ablato equo occiso, Romam venerat, non obstante, quod acerrimè causa pro Reo fuerit defensa, Boer. dec. 29. n. 7.*

Secundò quod id fortius procedit, quotiès agitur depuniendis delictis patris a personis Ecclesiasticis, quæ Summi Pontificis Iurisdictioni subiacent, & possunt in vrbe de illis pœna ordinaria puniri, licet extrà ditionem temporalem commissa sint, ut advertunt *Barbos, citato Tit. de Iudic. ad L. secundam §. legati num. 33. & seq. Fagnan. in cap. licet num. 21. de for. competen. ibi -- Roma enim communis est Patria, & idè in Romana Curia quilibet Clericus, vel Laicus conveniri potest, licet ibi non delinquat &c. Farinac. citata qu. 7. sub num. 12.*

Tertiò quod cum accessus ad urbem, & traductio Vxoris ad eandem facta prætenderetur libidinis causa, & pro maiori facilitate eam carnaliter cognoscendi, illam subtrahendo a Domo viri, utique ex tali destinatione D. Canonicus se subiecisset pœnis, quæ delictum expiare possent, etiam in Vrbe irrogandis, sicut eisdem obnoxius remanet tractans in illa delictum, quamvis extra statum perficiendum, ut tradunt *Alciat. conf. 13. lib. 7. Clar. in pract. crim. qu. 38. & quest. 39. Caball. resol. crim. cas. 3. num. 7. & seqq. ubi quod adtribuendam Iurisdictionem Iudici pro delictis commissis, attenditur potius persona offendens, quàm offensa, Pax Iord. elucubi canon, vol. 3. lib. 13. tit. 8. num. 194. & seq.*

Quartò quod prætensa cognitio carnalis, quatenùs in Processu pro-

probata dici posset, & per relationem ad illum de ipsa verificari valeret decretum reformatum, contigisset in Statu Ecclesiastico, cum eius potissimum indicium defumarur ex ass. condormitione in eadem cella in Hospitio Castri noui, per *Text. in cap. literis de presumpt* aliasque auctoritates adductas per D. Pauperum Procuratorem in *S. sed profectò*. Adeoque non pro sola contrectatione, sed pro Adulterio potuisset, ac debuisset D. Canonicus pœna condigna plecti, si probatum fuisset, quæ cum imposita non fuerit, nisi etiam de Iniustitia redargui velit d. Decretum mitiorem pœnam irrogans, & solum adaptabilem simplici deuiationi, & complicitati in fuga excusationibus per D. Procuratorem charitatis adductis valdè temperandam, asserendum propterea est, D. Canonicum nullatenus fuisse pro prætenso carnali cognitione damnatum nam qualitas pœnæ bene arguit delicti qualitatem, cui commensurari debet, iuxta illud *Deuteron. cap. 25. ibi -- Pro mensura peccati, erit, & plagarum modus & tradunt, Caball. cas. 31. num. 19. & cas. 145. n. 5. Chartar. dec. Crim. 50. nu. 5. & dec. 70. num. 3. & decis. 66. num. 86.*

Exclusa itaque prætenso condemnatione D. Canonici pro cognitione carnali Franciscæ Pompiliæ, corrui quoque prætenso notorietas Adulterij ex illa resultans, quæ tamen nec etiam posset contra illam indefensam allegari, & sicuti non posset in eadem licitè fundari publica vindicta a Iudice decernenda, ita nec multò minùs excusabilis existimari valet priuata a viro ex interuallo sumpta cum eiusdem nece, solum a pœna ordinaria immunis, iuxta mitiorem sententiam, quando per liquidissimas probationes de Adulterio constat à D. D. exemplificatas in confessione, vel sententia super illo emanata.

Prout etiam superfluum esset elidere præsumptiones per DD. Defensores, præcipuè per D. Procuratorem Pauperum adductas ad eruendam ex ipsis Adulterij probationem, sufficeret enim vnica responsio, quod omnes cumulatae fuerunt in Processu super fuga, & deuiatione confecto ad instantiam D. Guidonis eodem urgente pro lucro dotis propter Adulterium, & per D. pro Fisco scribentem tunc acriter super illis fuit institutum, & tamen in relatione Causæ non fuerunt a DD. Iudicibus in consideratione habitæ ob ipsarum irrelevantiam, vt constat ex leuitate pœnæ contra ipsum D. Ca-

nonicum decretæ. Adeo nequeat modò illarum examen, refricari postquam Fiscus succubuit, & adhærens sententiæ acquieuit, a qua prouocare poterat, si se grauatam sentiebat, nec licitum ei erat ad immanem facti vindictam conuolare; ne tamen aliquid intactum relinquatur, & Iustitiæ Decreti clarius asseratur; breuiter easdem consutandas assumere operę prærium duxi.

Et quoniam primo loco consideratur per D. Defensorem causa fugæ, vt illam omninò illicitam, & ad commodiorem carnalem cognitionem ordinatam suadere valeat executiendæ sunt probationes ad id allatæ, quarum præcipua desumitur ex asserpta Epistola Franciscæ Pompiliæ, scripta D. Abbati Franceschino, Genitores insimulando, quod ipsam adigerent, vt Virum, Cognatum, & Soctum veneno perderet, Domum comburteret, & cum Amasio ad urbem remearet, cuius profectò melior consutatio haberi non potest, quàm ex ipso eiusdem Epistolæ tenore aded inuersionibus, imò incredibilia contingente, vt merito sprete fuerit a DD. Iudicibus; Quis enim filialis amoris, & obseruantię aded expers, & immemor reperiri poterit, vt sibi persuadeat, tenerrimam puellam, tunc decimum quartum ætatis annum non excedentem, vt ex fide Baptismi *Summ. num. 2.* extrà Patrios Lares nuptam, & de discessu Parentum acri dolore percussam, & (in domo Viri pessimè habitam, vt coacta fuerit recursus habere ad Superiores tam Ecclesiasticos, quàm Laicos aded improba sibi ab ipsis tradita nedum consilia, sed imperia æquo animo conscripsisse Viri Fratri eisdem notoriè infenso, nisi vt ipsa ingenuè faretur ad ea conscribenda coacta fuisset a Viro, cui citra maximum periculum hæc imperanti reluctari non poterat, cum ipsa sola inuersionilitudo apta legentibus horrorem iniicere satis ostendat, id non spontè, sed coactè gessisse, iuxtà tradita per *Farinat. conf. 22. num. 34. anti med. lib. 1. & conf. 60. num. 31. in fin. Caball. resolut. crim. cas. 199. num. 36.* vbi quod non est admirandum, quod nemo sanus probaret, *Vermigl. conf. 3. num. 6. & 7.* cum alijs ibi relatis.

Ac propterea opus non est examinare: an verisimilis existimanda sit qualitas confessioni adiecta, quod maritus designauerit elementa d. Epistolæ, quæ super inducto ab ea calamo, fuerint atramento notata, quia ipsa scribere nesciebat. Perhorruit enim forsitan etiam metu adactam se talia scripsisse. fateri in-

per-

perniciem Patris, & Matris, qui tamen in misera vxore tene-
 ræ ætatis omni auxilio destitutæ extra Patrios Lares, & in do-
 mo viri est omnino præsumendus, vt tradunt *Menoch. consil.*
1. num. 290. lib. 1. Crauet. conf. 114. num. 3. lib. 1. Cepol. caut. 221.
num. 4. & 8. Magolon. de metu cap. 2. §. 7. num. 15. vbi quod ex
 absentia consanguineorum resultat præsumptio metus, *Ca-*
pye. Latr. dec. 138. num. 16. & præsertim post inutiliter habitos
 recursus ad superiores. Contraria probatio sufficienter non
 deducitur ex ipsius Franciscæ Pompiliæ subscriptione in ca-
 pitulis matrimonialibus, & ex assertis Epistolis successiuè ab
 ea conscriptis, & D. Canonico transmissis, aut à fenestra pro-
 iectis, vt refert *Testis Fijscalis in Processu fuga fol. 108.* Quo-
 niam breuissima subscriptio exarata in Capitulis matrimonia-
 libus non præsertim talem peritiam scribendi, vt cum eadem
 commoditate adeo longam Epistolam conscribere potuerit,
 cum quotidiana experientia doceat, plures reperiri, qui vix
 proprium nomen scribere valent, eaque multo minus ex as-
 sertis Epistolis probata dici potest, cum fuerint ab eadem
 constanter negatæ nec satis verificatæ dici valent ex assertio-
 ne dicti Testis Fijscalis, quod ipsa proiecit è fenestra cartam,
 quam D. Canonicus collegit, & discessit, quia vltra quod est
 vnicus, & vilissimæ conditionis scilicet in honesta Meretrici
 ideoque ineptus ad conuincendum, vt monet *Text. in cap. ve-*
niens, cap. licet vniuersis de Testib. Farinac. de Testib. q. 64. n. 28.
Vermigl. conf. 146. num. 3. D. Canonicus Raynald. in sintax. rer.
crimin. tom. 1. cap. 4. §. 10. num. 118. nec affirmat, nec affirmare,
 potest, illam esse Epistolam à Francisca Pompilia conscri-
 ptam. Prout aliena manu conscribi potuissent Epistolæ in
 Carcere Castri noui repertæ, & quatenus etiam fuissent ab
 ipsa exarata, cum sint posteriores, non arguunt peritiam scri-
 bendi de præterito, quia hæc potuit acquiri ex post, despera-
 tione ingenium acuate, vt D. Canonicum allicere posset ad
 fugam cum ipsa captandam, vt ita euaderet imminentis mor-
 tis periculum; In his enim quæ variabilia sunt, & superueni-
 re possunt, à præsentis non benè arguitur ad præteritum, vt
 tradunt *Alciat. in tract. de præsum. reg. 3. præsum. 28. un. 2. vers.*
Et idem credo, Crauet. de antiquit. temp. in ult. part. num. 5. Me-
noch. de præsumpt. lib. 3. præsumpt. 93. num. 7. & quod de facto in
 Ciuitate Arcuina post discessum Parentum scribere didicerit,

constat ex eiusdem Epistola scripta in Carcere Castri noui re-
perta inter domesticas scripturas post obitum illius data in
presenti Summ.num.3.

Verificationes quoque præfatæ Epistolæ desumptæ ex litteris
D. Præsidis, seu Commissarii Aretij, Reuerendissimi Episco-
pi, & D. Bartholomæi Albergotti, tantum abest, vt licitam
fugæ causam ab ipsa Francisca Pompilia, & D. Canonico in
Processu fugæ adductam excludere valeant, vt potius eam-
dem confoeant; Nam dum redarguunt tanquam inconsul-
tos recursus ab ipsa habitos, forsân ad se eximendum à censu-
ra, quod ipsos impronidè reiecerint, eo magis credibile est,
per illos exasperatum fuisse animum ferocis viri, & immitis,
ac semper, vt experientia docet implacabilis focrus, quem
multò magis exacerbatum fuisse quilibet sibi persuadere po-
terit post motam litem super suppositio ne Partus, & rescis-
sione instrumenti dotalis, & publicatas scripturas super an-
gustia rei familiarijs, & pessimis tractationibus habitis Aretij
in domo coniugum, & ex concepta suspicione amoris erga
D. Daonicum, quamuis simulati ad illum alliciendum ex
qua viri exasperatione capitale odium excitante, quod orit-
tur ex lite super re magni valoris, & multo magis de toto
asse, vt aduertunt *Grammat.conf.46.num.4. Crauest.conf.75.*
num.11. Decian. tract. crimin. lib.3. cap.25. num.56. & 57. Ver-
miglioli.conf.321.num.5. Farinacc. quest.49. num.2. qualis re-
putanda erat controuersia super suppositione Partus, negari
profectò non poterit iustus timor infælicis vxoris de suæ vitæ
discrimine, ad quod euadendum in desperationem acta licitè
potuerit fugam arripere, quod si licitum est ob simplices per-
cussiones ultra terminos permissæ correctionis, vt post *Ancha-*
ran.conf.408. & Tiraquell. in leg.1. connub.num.24. monet *Mol-*
ler. de Cornu. cap.5. num.24. quantò magis licitum existimari
debet, dum vxor sibi mortem ferro, aut veneno inferendam
continuo timebat, pro qua vitanda prudens consilium fuit à
viro recedere, & ad Patrios Lares remeare.

Satiùs quidem fuisset securitatem captare, recursum habendo
ad Reuerendissimum Episcopum, vt ipsam in aliquo Mona-
sterio, vel penes honestam matronam collocaret, vel ad D.
Commissarium, qui eiusdem indemnitati, & honori familiæ
viri consulisset, aut saltem in societate cuiusdam attinentis
fugam

fugam arripere, sed ultra, quod timor imminentis periculi non fuit meliora consilia sumere, & præsertim miserimæ mulieri tenere ætatis omni auxilio destitutæ, & expositæ furori viri, ac focus, timeræ poterat frustra novos recursus ab ipsa habendos, dum primos iam inanes experta fuerat, nec alium aptiorem modum inuenire valebat ad fugam tutò arripiendam, in qua vnicum remedium sibi superesse existimabat, quam adhibita ope, ac societate Domini Canonici sibi ad hunc effectum propositi à Domino Canonico de Comitibus, & Domino Gregorio Guillicchino Viro affinitate coniunctis, quos credibile non est sinè maxima, & vrgenti causa, & confidentia de illius honestate, atque modestia in perniciem honoris eiusdem conspirasse, quorum alter, scilicet Gregorius sese etiam exhibuerat Comitem itineris, & id quoque præstitisset, si eius infirmitas permitteret, vt ex d. Epistola Franciscæ Pompiliæ post obitum reperta exhibita *in præsentì Summ. d. num. 3.* eandem causam infirmitatis Gregorij referente, atque imminentis periculi, quod passum non fuit, vt illius conualescentiam expectaret. Adeoque cum necessitate cogente in societate D. Canonici perspectæ ab ipsa modestiæ, vt paritèr constat ex alia Epistola *Summ. ex aduerso num. 7. Epist. 12.* in qua eum castum Iosephum appellat, & ex altera, in qua ipsius verecundiam commendat, excusanda est, si necessitate cogente hoc remedium elegit, ex vulgato axiomate, quod necessitas legem non patitur, de quo *Ancharan. conf. 191. num. 4. & 5. & conf. 243. num. 4. Cephal. conf. 451. num. 283. Gaill. obseru. lib. 1. obseru. 102 num. 8. Ceuall. com. contr. comm. tom. 4. quest. 62. num. 50. Bellèss. disquis. Cleric. rit. de discipl. Cleric. pars. 1. S. 4. num 55. Tiraquell. de pen. temp. caus. 33. num. 3.*

Desumenda propterea non est causa illicitæ fugæ propter inhonestum amorem, quo Francisca Pompilia D. Canonicum prolequebatur ex eiusdem Epistolis, quia licèt amatorix videantur, tamen vt potè ordinatæ ad alliciendum eundem D. Canonicum, vt cum ipsa fugam arriperet, quam sine illo nec exequi, nec tentare posse agnoscebat, nullum præbere valent indicium sequenti Adulterij, quod licèt resolter ex literis amatorijs, vt ex auctoritatibus adductis per D. Defensorem *in S. His præbabitis*, tamen illud prorsus elisum remanet,

si ad finem licitum, qualis est fuga pro vitando discrimine
 vitæ sint directæ; Nam tunc sicuti permissus est finis, ita lici-
 ta existimanda sunt media. quamuis suspicione non carentia,
 quæ non per se, sed propter finem considerantur, vt tradunt,
Gratian. discept. for. cap. 580 num. 8. Gob. consult. 119. numer. 72.
 Et adhuc non est adeo violenta præsumptio adulterij ex lit-
 teris amatotij desumpta nisi sequatur fornicationis implici-
 tam confessionem inuoluant, vt explicando DD. contrarium
 asserentes tradit, *Sanch. de matrim. lib. 10. tit. de diuort. discurs.*
12 quest. 3. num. 48. eoque relato Moller. de Cornut. cap. 7. nu. 24.
Vrgente præsertim ad id suadendum consideratione, quod in-
 felix puella existimabat D. Canonicum modeste secum se ha-
 biturum in itinere, dum ipsum alijs de modestia, ac castita-
 te commendatum obiurgare non desinit in vna ex Epistolis,
 quod eidem carmina inhonesta transmiserit *Summ. præsentis*
num. 4. ibi -- E mi meraviglio, che voi, che sete tanto casto, ha-
uerete composto, e copiato cose tanto poco honeste -- & infra ibi --
ma io non vorrei, che voi faceste così in ogni cosa, come ha-
uerete fatto in questi libri, che il primo è stato tanto honesto, e que-
ste ottane tutte il contrario, che voi da tanto honesto, cho sete, di-
uentaste tanto ardito, il che non credo -- ex qua profecto sinea-
 ra obiurgatione constat, quo animo conscriptæ sint Epistolæ,
 licet blanditias, & amoris significationes continentes, dum
 ipsa etiam ab inhonestis carminibus sibi transmissis abhorre-
 bat. Adeoque ipsæ Epistolæ secundum intentionem scriben-
 tis, sicut verba iuxta intentionem proferentis intelligi debent,
 vt ex *Text. in cap. Intelligentia. & cap. Præerea de verb. signi-*
fic. monet Oldrad. conf. 9. num. 3. Surd. conf. 431. num. 35. Molin.
de rit. nupt. lib. 3. quest. 85. num. 50.

Leuis propterea, & improbabilis existimanda non est creduli-
 tas, quod in itinere matronalem pudicitiam erauerit infelix
 vxor velocissima fuga propriæ incolumitati consulere sata-
 gens, & quod ea non fuerit à D. Canonico tentata, dum
 amor inter ipsos intercedens vnicè probatur ex dd. Epistolis
 ad fugam ordinatis, & quæ præferunt sollicitudinem mode-
 stiæ, ac continentiæ, dum pro sola transmissione adeo con-
 quæsta fuit, timens ne audax euaderet, vt constat ex particu-
 la relatæ Epistolæ. Nec desunt exempla seruatæ continentię
 in longiori, & commodiori itinere per Amantes suscepto,
 atque

arque completo, quamuis licitè possent Amoris stimulis indulgere. Vndè inuicissimè non est, intra illius limites se religiosè continuisse miseram vxorem in vitæ discrimine constitutam, quod euadere præcipiti fuga præstolabatur.

Longè debiliores sunt aliæ præsumptiones prætensi Adulterij, ac proinde meritò spretæ in relatione Causæ tam super fuga, quam pro decernendo tormento; Mutuus enim Amor inter ipsam, & D. Canonicum non satis probatus dici potest ex præfatis Epistolis utpote tendentibus ad præordinandam fugam.

Ingressus, & egressus tempore nocturno in domum Franciscæ, & ab illa respectiue, probatur per vnicum vilissimum Testem, nec est ad malum finem præsumendus, dum tendebat ad præparandam fugam; Quoties enim habemus causam expressam licitam, ad quam referri potest, non est tribuendus causæ illicitæ, & criminosæ, *ut per Text. in leg. merito ff. pro soc. tradit in terminis Craueti. conf. 205. num. 7. & 8.*

Ad quam etiam referri debet facilitas se spectandam exhibendi in fenestra ad sibilum diu, nocturne signum præbentem transeuntis prætensi Amalij, quia cum amor simularetur ad illum alliciendum, ut fugæ opem ferret, se socium itineris præbendo, nil magis operari valent istæ Amoris significationes, quàm ipse prætensus Amor, quo tanquam stratagemmate infelix Vxor vsa fuit, ut propriæ incolumitati consulere; Et ita recurrit responsio, quòd dato licito fine damnanda non sunt media ad illum asequendum ordinata.

Prætensus quoque modus insidiosus, quo fuga fuit præparata, & executioni demandata per somniferum Viro, & Domesticis propinatum, quatenus probaretur. prout nullo modo fuit in Processu probatus, præberet quidem fugæ indicium, sed non etiam Adulterij, dum hæc non fuit ad illud præordinata, sed ad effugiendum vitæ periculum, cui nimis improvidè se vxor commisisset, nisi iacentem secum in lecto Virum sopore oppressum nacta esset, veletiam talem commoditatem procurasset.

Zelotipia in aliquibus Epistolis patefacta, est quidem signum Amoris, iuxta illud Poetæ -- *Res est solliciti plena timoris Amor* -- sed quoties, ut dictum est, Amor fuit ad licitum finem

nem simulatus, potuit etiam ad illum fingendum admisceri ostentatio zelotipiae ad eundem finem tendens [captandae benevolentiae, ut voti compos euaderet; Ex quo propterea simulatio Amore, & confictis eius signis argui non potest, quod discessus simultaneus à domo Viri, & associatio per longum iter praetensi Adulterij probationem inducat, cum etiam in casu intercedentis veri reciproci Amoris seruata fuerit continentia, quod certè magis difficile est.

Ne applicantur adductae auctoritates per D. Defensorem in §. *Accedit quod: Quia Textus in L. Consensu §. Vir quoque C. de repud* procedit in muliere absque iusta, & probabili causa pernoctante extra domum Viri eo inuito, ut constat ex verbis eiusdemque dispositio casu in nostro non adaptatur, dum miserima Vxor discessit à domo Viri, & ad Patrios Lares se contulit, ut vitæ periculum, quod sibi imminere timebat, effugeret, & ita dum ex iusta, & probabili causa id egit, praefati Textus censura potius retorquetur, & ita etiam suam assertionem explicat *Farin. in contrarium adductus quest. 136. num. 182. ibi -- Secus si cum causa subdenda, quod sola pernoctatio non probat stuprum, quia potest dari casus, quod Vxor pernoctauerit etiam cum Viris, & tamen Matrimony fidem non laeserit, & optime Craueti. cit. conf. 105. num. 11. vers. 2. principaliter considero*, quæ possibilitas cum verificetur in casu quoque nostro non potest ex fuga, & associatione in itinere ad finem consulendi propriae indemnitati desumi praesumptio sequenti Adulterij.

Mutua deosculatio in itinere non leuem praebet violatæ pudicitiae praesumptionem, quatenus probaretur, sed nimis fluxa est probatio resultans ex dicto vnus vilissimi Testis prorsus inuerrisimilia deponentis, quod scilicet dum Currum volantem vulgò *Caleffi* citato cursu ducebat, viderit Franciscam, Pompiliam, & Canonicum se inuicem deosculantes; Quam animosa sit hæc depositio, ex eo constat, quod respicit factum nocturnum, & quidem momentaneum, & transitorium nulla reddita causa scientiæ, quod Luna luceret, vel aliud artificiale lumen commoditatem praebuisset illud videndi, ut tradunt *Bursat conf. 34. num. 6. Farinac. de Testib. q. 66. num. 38. Giurb. conf. Crim. 37. num. 41. Polidor. Rip. de noct. temp. cap.*

cap. 57. num. 7. D. *Canonic. Raynal. tom. 1. cap. 11. §. 8. ad*
13. num. 8.

Augeturque inuerisimilitudo, seu potius incredibilitas, quod dū
Testis intentus erat ducendo Curriculo cūm eximia veloci-
tate volatum imitante, vt deponit alius Testis potuerit retro-
spicere, & mutux deosculationis actum videre, quæ inuerisi-
militudo fidem adimit nedum vni, sed pluribus testibus, vt
in celebri Perusina Laudi relata per *Vermigl. conf. 75. num. 4.*
considerata insuper possibilitate, quod ex velocissimo cursu
potuerit contingere collisio manentium in Curriculo, & ex ea
crediderit Testis nimis curiosus, quod ipsi se inuicem deo-
scularentur. cum re vera merè casualis esset approximatio
vtriusque capitis, vel faciei non ad impudica oscula libanda
præordinata, quoties autem actus trahi potest ad bonum, vel
malum sumenda, semper est præsumptio mali exclusiua, vt
monet *Alex. conf. 128. lib. 4. Crauet. citata conf. 205. num. 9.*
& *seqq.* Arque ideo meritò hæc præsumptio ex defectu
probationis spreta fuit in dicta relatione Causæ super fuga,
quæ cætero quin spernenda non erat.

Nullumque fomentum recipere valet nimis inuerisimilis, &
animosa dicti Testis depositio ex prærens Epistolis, in qui-
bus Francisca gratias agit de osculis transmissis, quæ cariora
sibi fore proficitur, si verè à Canonico tradita fuissent, & de-
ciens centies millies eidem trasmittere, non enim exindè infer-
tur, quod arrepta commoditate mutua deosculatio contigerit
cum ista sint verba officiosa, & captatoria prolata ad finem
alliciendi, quæ obligationem non pariunt, vt firmat *Deciau.*
conf. 55. num. 14. Paris conf. 89. num. 27. Corn. conf. 129. num.
3. & seqq. Ladere. conf. 101. num. 1. & 2. Gen. descript. pri-
uat. lib. 3. de Epist. num. 13. & 14. eiusque propterea exe-
cutionis præsumptionem non inducunt, maximè cum eadem
Francisca pluries Canonicum monuerit, vt modestiam
seruaret, & dum eius fines ipsam transgressum fuisse compe-
rit sibi transmittendo Carmina parùm honesta, eundem obi-
urgauit, ne in posterum audax euaderet suum desiderium,
insinuando, quod longè distat ab impura cupiditate illius
oscula recipiendi in dicta Epistola officiosè, & citra intentio-
nem matronalem pudorem temerandi *exposita.*

Vfus quoque vestium Laicalium, quibus repertus fuit indutus

Ca.

Canonicus nullum præbere valet indicium, quia cum non esset Sacerdos, vetitus dici non poterat in itinere, fuitque ad bonum finem forsan ordinatus se celandi, & auertendi scandalum, quod concepì potuisset videndo personam Ecclesiasticam cum muliere florida ætatis, & vt audiui non spernendæ famæ iter facientem absque alterius sæminæ, vel famuli comitatu, Adeoque non applicatur auctoritas *Matth. Sans. de re crimin. cons. 11. num. 31.* quia in eius casu nulla concurrebat causa, propter quam Clericus, vestibus indecentibus, & armis instructus incederet, & repertus fuerat à Viro, vel in ipsa turpitudine, vel in præparatoriis ad illam, & illicò interfectus fuerat, quo casu Adulterij præsumptiones benè admittuntur ad minuendam pœnam, & ad hunc effectum ab eodem Auctore cumulantur.

Condormitio tandem in eodem lecto, vel saltem in eodem Cubiculo in Hospitio Castri noui non fuit in consideratione habita in dicta relatione Causæ super fuga ex defectu probationis negata quippe fuit à Francisca Pompilia, & solum Canonicus ingenuè fassus est, quod parumper quieuit in alio lecto in eodem Cubiculo manente, nec breuis mora in eodem est ad delictum trahenda, dum tribui debet custodiæ susceptæ d. Francisce, cui socium itineris se præbuit, & propterea tenebatur eam custodire, nè aliquid mali ipsi eneniret; Quoties autem actus ex causa licita gestus dici potest, cessat suspicio mali, vt in præcis terminis monet *Cranetti d. cons. 205. n. 9. & seqq. ubi num. 15.* ait quod ad humaniorem partem semper est habenda interpretatio, quamuis rigorosa videatur fortior subdens *num. 20. & 21.* non sufficere ad plenam probationem Adulterii, quod quis visus fuerit solus cum sola & nudus cum nuda, & quod iuuenis fuerit inuentus in cubiculo clauso cum muliere dispectoratus, & caligis solutis, quia hæc possunt esse mera præparatoria, quoties, criminaliter agitur. Adcòque multò minus eius præsumptio insurgere potest ex breui mora in eodem Cubiculo custodiæ causa.

Neque probatio Condormitionis in eodem lecto desumi potest ex depositione Cubicularij eiusdem Hospitii afferentis vnum tantum lectum instrui sibi demandatum fuisse, non enim exinde

de sequitur ambos in illo cubasse, id autem actum fuit, quia sola Francisca parumper quiescere volebat, ut vires reciperet celeritate peracti itineris prostratas, Canonico ad eius custodiam excubante, & prosecutioni eiusdem itineris parandæ incumbente, prout de tempore, quo maritus superuenit, id exequatur præstolando aptari Curriculum. Atque ideo nulla ex tali depositione resultare valet probatio Condormitionis, eaque merito per DD. Iudices reiecta fuit, ulteriori confutatione non indigeat.

Et quamvis Francisca Pompilia in suo examine occultare affectauerit longiorem moram in dicto Hospitio asserendo ad illud peruenisse in Aurora, nullum tamen ex dicto mendacio argui valet indicium prætensi Adulterij, quia id forsitan asseruit ad magis auertendam suspicionem violatæ pudicitæ, quæ potuisset ex longiori mora, & maiori commoditate concipi; Vnde cum si ea facta fuisset cum circumstantiis seruata modestiam suadentibus, nihil eidem obesset confessio, ita nec obesse valet mendacium, ut tradunt *Marsil. consilio 15. num. 15. Bertazzol. conf. 59. num. 7. lib. 1. Vermigliol. conf. 45. num. 20. & consil. 273. num. 7. Farinat. conf. 192. num. 11. ad med. versum tum etiam & conf. 222. num. 14 & quest. 52 num. 14. & seqq.*

Ex his cum exclusa, & pænitus elisa remaneat probatio prætensi Adulterij, curandum non est, quòd D. Guido in confessione qualitatem apposuerit causæ honoris respicientis non solum Vxorem, sed ipsosmet socros, quæ confessio scindi non potest, saltem ad effectum irrogandi pæniam ordinariam; vltra quòd enim non desunt magni nominis Doctores etiam ad hoc qualitatem confessioni adiectam reiiciendam esse affirmantes, & præ alijs *Bartol. in L. Aurelius § Idem quaesuis ff. de liber. cau. quem secuti sunt Bald. qui pluribus hanc probat conclusionem, & responderet contrarijs in L. 1. num. 44. & seq. Cod. de Confessis*, vbi quòd Iudex non debet admittere hanc qualificatam confessionem *Beron. in cap. At si Clerici num. 73. de ludic. vbi alijs relatis de magis communi testatur Angel. de malef. verb. Comparuerunt d. d. Inquisiti & c. num. primo, Foller. in pract. Crim. verb. & si confitebuntur par. 1. numer. 46. Boss. tract. Crim. tit. de confess. num. 19. vbi quòd in hoc Bartolus est com-*

mu-

muniter approbatus, *Mench. de arbitr. cas. 93. num. 37. ubi de communi, Clar. in pract. §. fin. quest. 55. vers. Possit quoque reus, vbi reprobatis contrarijs, hanc dicit magis communem opinionem, & ab ea in iudicando non esse recedendum, Pacian. de probat. lib. primo cap. 25. num. 13. Gutter. quest. 19. numer. 33. & 34. Spad. conf. 109. num. 22. lib. 1. Conciol. verb. confesso resol. 24. num. primo, & seq. Vermigliol. consil. 238. num. 6. & conf. 282. num. 1.*

Huiusmodi honoris causa non semper prodest pro vitanda ultimi supplicij pœna, sed tunc solum, quando vindicta sumitur incontinenti, vel iuxta mitiorem opinionem etiam ex interuallo legitimè tamen probato Adulterio per sententiam condemnatoriam, vel confessionem.

Nimis autem laxarentur habentis privatae vindictae in perniciem Reipublicae, si deficiente probatione Adulterij pro minuenda pœna, standum esset qualitati per Reum confessioni adiectae, quia sic euaderet Testis in causa propria, quod nemini permixtum est, iuxta *Text. in L. nullus ff. de Testib. & in c. Nullus eodem tit. Rot. Ian. decis. 94. num. primo, & in rec. decis. 261. num. 3. par. 3. & decis. 272. num. 19. par. 17.* & onus probationis eidem incumbens pro effugienda pœna ordinaria impletum, remaneret ex ipsa sola Rei assertionem, quo nihil absurdius excogitari potest.

Ceterum non est admittenda opinio, quod probato etiam Adulterio liceat Marito uxorem Adulteram ex interuallo interficere absque incurfu pœnae Capitalis, cum eam reprobent grauissimi Auctores, vr præter adductos in Informatione §. *Ceterum usque ad §. Solumque, & in responsione §. in Iure videri possunt Bartol. in L. 1. §. Cum igitur ff. de vi, & vi armata, vbi distinguendo inter iniuriam realem, & personalem firmat, quòd quando Iniuria est personalis, debet propulsari incontinenti, si vero sit realis, potest propulsari ex interuallo, Gomez. ad leg. Tauri 82. num. 58. §. Item quia vers. Sed his non obstantibus - ibi - ego teneo contrariam sententiam, imò quòd Maritus puniatur pœna ordinaria delicti tanquam Homicida, nec propter hoc aliquo modo excusetur, quia verè commissi Homicidium, nec potest compensare delictum, vel effensam praeteritam, nisi in eo casu, quo occiderit in flagranti Crimine, &c.*

& subsequentibus numeris respondet contrarijs fundamentis Bellon. de ijs, quæ sunt in continenti cap. 65. num. 17. Gaill. pract. obseru. lib. 2. obseru. 101. num. 5. vbi postquam firmanit, quòd Homicidium causa honoris commissum sit licitum ait- *Intellige autem hanc fallentiam procedere si incontinenti Iniuria retorqueatur, secùs si ex intervallo hoc fiat, quòd casu talis retorsio magis ad indictam, quàm honoris defensam spectaret, & proindè ratione Iniuriarum tenetur. Boss. tit. de Homicid. num. 87. Mart. vot. 306. num. 5, & 6.*

Multoque minùs prætendi valet, quòd vindicta fuerit incontinenti sumpta, quia Maritus statim, ac potuit, etiam fuit executus, ex auctoritatibus adductis per Dominum meum Pauperum Aduocatum S. *Aqua quidem cum seq. vbi ostendere conatur, quòd cum esset inermis, vel imparibus armis, scilicèt Ense tamen viatorio instructus, aggredi non potuit vxorem associatam à Canonico viro strenuo, & audaci, ac solito in similibus delinquere, & arma sulphurea gestante, & qui se pròptum obtulerat pro defensione Amalixæ mori, addito insuper, quòd Vxor stricto in ipsum gladio irrupit, necem illatura, nisi coercita fuisset à Birruarijs. Quoniam commoditas occidendi Adulteram non est ita sumenda, vt nex illi valeat inferri cum omni securitate, & absque vllò discrimine, Ab hoc enim omnis abhorret Iuris Censura excusationem præbens prò minuenda poena, si ea sequatur ex impetu inconsulti doloris, qui Maritum cogit ad negligendum propriæ vitæ periculum, ve illatam sibi ex Adulterio iniuriam vliscatur. Prima itaque commoditas à Doctoribus considerata, vt Homicidium dicatur incontinenti patratum. intelligi debet cum primùm sese obtulit occasio, & in dictam sumendi, excusando illius dilationem, vel propter absentiam, vel propter aliam iustam causam, vt in casu, super quo scripsit *Martb. Sans. contr. 12.* In eo enim Adulterium commissum fuerat absente viro, & vxor aufererat, itaut priùs ipse se vlisci non potuerit, vt constat ex serie facti relata num. 1. & num. 28. conclusionem ità statuit. *Itaut excusentur, præsertim si statim, ac passim, vindictam sumpserint, cum tunc incontinenti occidisse videatur**

Quis autem affirmare valeat, Maritum in casu nostro primam occa-

occasionem sumpſiſſe, dum reperta vxore in ipſo actu fugæ in
 Hoſpicio Caſtri Noui abſtinuit à vindicta facti, & ad illam
 Iuris conuolauit, quam ſemper proſequutus fuit, nimiz que
 proſectò ignauiz ſe accuſat, aſſerendo, quòd impar eſſet pro
 ea perficienda ob ferocem Canonici naturam, quia dum ipſe
 reperiebatur arreſtatus, poterat in Vxorem irruere, nec qua-
 litas armorum ipſum terrere debebat, quia ex deſcriptione
 facta in Proceſſu apparet, quòd Enſem tantum geſtabat, adeo-
 què paribus armis erant inſtructi, nec adeò propriæ incolumi-
 tati conſuluiffet, ſi ſtimulis bonoris reparandi fuiſſet adactus ad
 vindictam ſumendam cum aliquo etiam illius diſcriminæ lu-
 ſtus enim dolor modum neſcit, ſibi que imputare debet, ſi ſo-
 lus, & imparibus armis vxorem cum Amatio valido, & me-
 liùs armato vt timere poterat fugientè inſecutus fuit, iſteque
 modus inſequutionis potiùs arguit eius animum fuiſſe con-
 uerſum ad vindictam Iuris pro lucro dotis captando, quàm
 ad vindictam facti pro reparando honore. Factum enim opti-
 mè oſtendit, qualis fueris animus, vt per *Text in L. 1. §. ſin. ff.
 de dol. tradunt Grammat. conf. 13. num. 2. & 3. & deciſ. 37. num.
 6. Mascard. de probat. lib. primo concl. 95. num. 1. & 2. Farinacc.
 in fragm. Crim. parte prima liſtera B. verb. Animus numero
 228.*

**Dilatio pariter vindictæ poſt reditum vxoris ad domum pater-
 nam excludit prætenſam qualitatem, quod fuerit incontinen-
 ti ſumpta quia prius exequutioni mandari non potuerit nam
 iſte contigit die 12. Octobris anni præteriti, & nex eidem
 illata fuit ſecunda Ianuarij præſentis anni, & potiùs affirman-
 dum eſt expectatum fuiſſe illius partum ſequutum die 18.
 Decèbris, vt ſucceſſio ad quam Maritus inhiabat in tuto po-
 neretur dum ſtatim peſſimum conſilium vxorem eiusque ge-
 nitores immani excidio perdendi fuit executioni traditum, vt
 ex combinatione tempotum facile erit dignoſcere exindeque
 etiam conſtat quo animo illud perpetratum fuerit, & an pro
 aſſerta reparatione leſi honoris vindicta dici valeat incontinen-
 ti ſuſcepta ideſt cum primum commoditas, & occaſio ſe ob-
 tulit iuxtà in contrarium adductus authoritates.**

**Electa proindè vindicta Iuris per Carcerationem Vxoris, & præ-
 tenſi Amatio, & proſecutionem cauſæ Criminalis, licitum non
 fuit**

fuit ad vindictam facti regredi, eamque sumendo dici non potest, quòd incontinenti ultionem susceperit, & publicam Iudicij, imò supremi Principjs Maiestatem violauit, quæ sola circumstantia valdè poenam exasperat, & delictum extollit, vt monet *Text. in l. quod ait lex S. fin. ff. ad leg. Iul. de Adulter. Angel. de malef. vers. Che hai adulterato la mia Donna, num. 21. in fine* cum alijs relatis in præterita informatione §. *Solumque*.

Absque eo, quòd applicari valeant conclusiones per D. meum Pauperum Aduocarum adductæ in §. *Est tantum abest cum seq.* & auctoritates illas comprobantes, quòd Iniuria non præsumatur à Marito remissa, sed potius continuatio animi se vltiscendi prodicionis exclusiua, licèt Maritus dissimulatione vsus fuerit pro vindicta sumenda; Quia quæstio in præsentia non est super qualitate Homicidij, ex quo illud verè proditorium prætendatur, nec Maritus Iniuriam dissimulauit, sed potius eam propalauit, conuolando ad vindictam Iuris, quæ licèt forsan sit minùs honesta, tamen dum ei placuit, vt Dorem lucraretur, non potuit sua spe frustratus, ob non probatum Adulterum, reassumere vindictam facti, dilationis excusationem prætendendo, quòd scilicet illam priùs exequi non potuerit, Cum enim dilatio, & impedimentum prouenerit ex facto proprio, non potest ex illo præsidium excusationis captare, iuxtà regulam *Text. in cap. Damnum de regul. Iur. in 6. Rot. decis. 345. numero 15. parte 17. & deefione 609. numer. 12. par. 18. rec.*

Sed vicunque excusanda esset barbara nex miserimæ vxori sub Iudice manenti, viro instante, ac illam deferente, illata, certè prorsùs inexcusabile reputari debet Excidium Petri, & Violantis, quibus licèt adaptare quoque in confessione affectauerit causam honoris ob prætentam complicitatem tam insuadenda fuga, quàm in asserta Vxorihonestate, nulla tamen huius qualitatis probatio afferri potest, nec illius vmbra, vel minima resultat ex Processu fugæ. Ac prorsus inenarrabilis, imò incredibilis detegitur ex sola consideratione, quòd nullatenùs consensisset D. Abbas Franceschinus Inquisiti, & Rei confessi Frater eorum custodiæ committi vxorem eiusdem, si ali-

aliquam vel etiam leuissimam suspicionem d. complicitati habuisset, dum adeò acriter honoris reparationi anhelabat, qui planè consensus in scriptura Italico idiomate prò notitiâ facti exarata nimis animose negatus per D. Pauperum Procuratorem pro sua eximia ingenuitate admittitur, negando solum, eum ad notitiam Mariti peruenisse, vel solam scientiam præsumptam eiusdem à Fisco prætendi posse inferendo

Quæ tamen ultra, quòd est valdè probabilis, & ex violenta præsumptione deducta, cum nimis verisimile sit, quòd à Fratres fuerit certior redditus de Vxoris egressu è Monasterio, eiusque collocatione in d. domo cum obligatione suscepta per eius Genitores alimenta subministrandi, & maximè detecta prægnantia, vt tradunt *Gratian. discept. for. cap. 796. numer. 28. Grauert. consil. 123. num. primo & 2. Rot. decis. 341. num. 6. parte 11. recent.* In præsentem autem non agitur de scientia Mariti probanda, sed de inferenda ex dicto consensu præsumptione exclusiua prætensæ complicitatis Petri, ac Violantis in Vxoris inhonestate nullo modo probata.

Tantumque abest vt ea probata dici valeat respectu Petri, vt contrarium omninò constet ex eius Testamento condito de anno 1695. post introductam litem super suppositione Partus, in quo, ea non obstante primo loco reliquit hæredem vsufructuariam Violantem vxorem, & post eius obitum Franciscam Pompiliam cum onere habitandi in Vrbe, & honestè viuendi, vt apparet ex particula dicti Testamenti data in præsentem *Summario num. 5.* in quo etiam asserit, ipsam honestè hætenus se gessisse, & ob eius bonos mores legatum relinquere vsus fructus profiteretur. Adeò prorsus Incredible detegatur, quòd ipse viuens conspirare voluerit in eius inhonestatem, à qua mortuus quoque abhorruit, eam in casu, quo inhonestam vitam duceret, relicto vsufructu priuando, & horzando in casu dissolutionis Matrimonij ad religiosum habitum assumendum, relicto etiam ad hunc effectum pingui legato

Præsentem verò complicitatis nullam præbere valet præsumptionem consideratio, quod simulata præsentatione epistola à Domino Canonico transmissæ statim per Violantem

tem patefactæ fuerint fores occisoribus, ex qua facilitate, ac credulitate arguere conantur Domini Defensores, quod ipsi non esset inuisum nomen Amalij, & ita nec eius conuersatio cum Francisca Pompilia. Quoniam cum ipse fuerit Author liberationis eiusdem à periculo mortis eam à Domo Viri ad Patrios lares traducendo neglecto proprio discrimine mirum videri non debet, quod grati animi significationem pro collato filix beneficio conseruaret, & patefaceret nec exinde inferri valet consensus inhonestati quâ immunis erat præterita correspondentia, multoque magis de tempore quo ipse absens reperiabatur, & in Ciuitate Vetula relegatus.

Vera igitur Causa, propter quàm ipsis quoque nex iliata fuit, alia esse non potuit, quàm odium, quo Maritus exarserat ob intentatam litem suppositionis Partus spem eludentis pinguem dotem, & successiorem assequendj, & desiderium vltionis pro scripturis promulgatis occasione d. Litis promouendæ super angustia rei familiaris, & pessimis tractationibus in domo viri receptis, quæ nullatenus excusat à poena præmeditati Excidij, quinimò illam exasperat, utpotè ipsum extollens ad Crimen læsæ Maiestatis, ex nota dispositione Constitutionis Alexandrinæ, ut probatum fuit in præterita informatione S. *Accedit ad exasperandam.*

Pro cuius sanctionis, & dispositionis Bannimentalis eidem conformis censura effugienda, frustra recurritur ad exculationem desumptam ex superuenta prouocatione, iuxta decisionem Sac. Rotæ relatum post *conf. 67. Farin.* id quoque admittentis; Ea quippe quatenus resultare prætenditur ex consilio præstito pro fuga, & complicitate in eadem, ultra quod eius probatio vnicè desumitur ex asserta Epistola per Francisca Pompiliam scripta D. Abbati Franceschino toties reiecta, & ab ipso quoque spreta, dum in Processu super fuga fabricato nulla reperitur instantia, ut contra Petrum, & Violantem procederetur pro prætensa instigatione, longè præcessit litem motam super suppositione Partus, & rescissione instrumenti dotalis, adeoque prouocationem exclusiuam causæ litis parere non valet, quæ vltèrius debet esse vera, & non affectata, & delicto patrato correspondens, ut firmant *Blanc. de Indic. num. 255. & sequen. Vulpell. conf. 99. num. 2. Farinac. quest.*

quest. 52. num. 145. & conf. 192. num. 2. lib. 2. & conf. 221. num. 22. lib. 3. Vermigl. conf. 25. num. 3. ea verò, quæ desumi prætenduntur ex complicitate in asserta in honestate, prorsus exclusa remanet ex defectu probationis tam inhonestatis, quàm conniuentiæ, itaut provocatio ex illa desumpta detegatur omninò irrelevans, ut potè affectata.

Alia quoque lis intentata nomine Franciscæ Pompiliæ super separatione Thori, frustra evitari prætenditur ob assertam nullitatem monitorij, quia executum fuerit contra D. Abbatem Franceschinum mandato Procuræ carentem; nam illud erat amplissimum ad lites, ut ex eius tenore relato in præsentis *Summ. num. 6.* constat, & ira inducitur lite per monitorium, ut per *Glos. in Clem. 2. verb. Plenè, ut lit. penden. firmat. Rosa coram Buratt. decis. 109. num. 1. & 5.* versamur in terminis Alexandrinæ Constitutionis, & dispositionis Bannimentalis editæ contra offendentes ex causa litis; Non relevante responsione tradita per D. Procuratorem Pauperum in § *Quæ etiam apræsur*, quod, constito de inhonestate Vxoris, permittenda non sit impunitas ab Ira mariti suam iniuriam vlciscentis, per introductionem litis super separatione Thori, nec dici valeat Homicidium pro reparatione honoris commissum, in odium litis paratum. Quoniam supponit, id quod est in questione, probatam scilicet Vxoris inhonestatem, cuius probatio prorsus deficit, & ad summum procedere posset, si statim patratu adulterio Vxor instituerat Iudicium super separatione Thori; secùs dum illud intentavit post electam à marito viam vindictæ Iuris, criminaliter agendo pro prætenso adulterio, & pro lucro dotis, & postquam eius spe frustratus remansit, dum ex Processu nulla resultant illius indicia, itaur post ex asperatum viri animum propriæ incolumitati consulere licitum ei esse debebat, remedium separationis Thori implorando, quo Iudicio pendente nex eidem illata pœnis per Alexandrinam, & Bannimentalem sanctiones infligis sit omninò expianda cuius etiam dispositio applicatur dum Vxori nex illata fuit pendente adhuc causa Criminali contra ipsam per maritum instructa super prætenso adulterio cum dicta Constitutio lites tam Ciuiles quàm Criminales comprehendat ut constat ex eius lectura.

Coa-

Coadunatio patiter Armatorum, eorumque in Urbem introdu-
ctio pro securius patrâdo totius Familię excidio delictum ex-
tollit ad Læſę Maiestatis crimen, & pœnã exaſpetandam ſua-
det, vt firmatum fuit in præterita, eaq; non euitatur ex respon-
ſionibus traditis, ſed potius repetitis per DD. Defensores, &
præſertim quòd cum delictum principale perpetratum fuerit
ex cauſa honoris, ſicuti propter illam locum non habet ordi-
ordinaria pœna legis Cornalia de Sicarijs, ita nec irrogari va-
leat pœna procoadunatione per Constitutiones Apoſtolicas,
& generalia Bannimenta inſicta, quia confunditur cum pœ-
na delicti principalis, quod eſt vnicè attendendum, cum ani-
mus, atque propositum maleſicia diſtinguat, vt firmatur in
voto trium Sac. Rotę Auditorum Blanchetti, Orani, & Cocini
relato poſt ſecundum vol. conf. Farinacc. dec. 61. Quoniam fru-
ſtranea euaderet diſpoſitio diçę Constitutionis, & Banni-
mentorum ſi pœna coadunationis ceſſaret, quotiès facta eſſet
ad patrandum aliquod delictum mitiori pœna puniendum, ſi
enim, vt aduertit Farin. qu. 113. nu. 160. & ex eo repetit Spad.
conf. 25. nu. 39. lib. 1. ; Bulla habet locum etiam, quando con-
uocantur homines ad arma in caſu licito, & ad bonum ſinem,
quia per illam Summus Pontifex conſulere voluit publicę ſe-
curitati, & refrænare audaciã ſibi de facto Inſdicentium, quan-
to magis locũ habebit, quotiès coadunatio fit ad malũ finẽ ſci-
licet ad delinquendum, quamuis delictum pœnam ordinariã
non mereatur, illudq; fuerit ſequutũ, vt arguit Spad. d. conf. 25.
num. 39. vbi in §. Et credo: adducit rationem, quòd Pontifex
in hac Constitutione condenda conſiderauit ſolũ tumultus,
& alia mala, quę ex conuocatione Armatorum contingere
ſolent in perniciem publicę tranquillitatis. Et licèt eius
opinio fuerit reprobata per Doctores à D. meo Pauperum
Aduocato adductos in §. non refragante: confutatio non ca-
dit ſuper coadunatione Armatorum ad malum ſinem, quam-
uis non ad eò criminofum, vt pœna mortis imponi valeat, ſed
in caſu licito, ſcilicet pro recuperanda incontinenti poſſeſſio-
ne vim vi retundendo, in quo etiam caſu diſpoſitioni Bullę
locum eſſe conſuluit Spada, & ideo redargutio non efficit,
quo minus præfatę Constitutionis diſpoſitio ſic caſui noſtro
applicabilis, dum coadunatio fuit præordinata ad Excidium
integrę familię temerario aſu executioni traditum.

Quin

Quin obstare valeant vota dd. Sac. Rotæ Auditorum requiren-
cium, coadunationem esse ordinatam aduersus Principem,
vel Rempublicam, non ex causa patrandi aliud delictum, quia
si dicta qualitas verificaretur, frustra edita fuisset Constitutio
illam extollens ad Crimen Læsæ Maiestatis, & Rebellionis
satis resultans ex ipso facto, & animo turbandi statum Prin-
cipis, & Reipublicæ, & quatenus etiam conclusio in illis fir-
mata subsisteret, ea procedere posset, inspecta dispositione
Constitutionis, non etiam Bannimentali postea emanata, quæ
sane inutilis, & frustranea euaderet, si pœna capitalis per il-
lam imposita contra Coadunantes homines Armatos so-
lùm habere posset locum, quando delictum, ad quod patran-
dum facta fuit Coadunatio, sit eadem pœna plectendum, &
adhuc hac necessitate admissa non posset euitari applicatio
Constitutionis, dum nulla honoris causa pro excusanda nece
Petri, ac Violantis est allegabilis, & respectu Franciscæ Pom-
pilix nullatenus probata fuit.

Præparatio pariter armorum prohibitorum, eorumque vsus pœ-
na capitali plectendus, inspecta dispositione Bannimentorum,
& Constitutionis sa. mem. Alexandri VIII., sufficienter non
euitatur responsione tradita per D. D. Defensores, quòd con-
funditur cum delicto principali, adeout maior pœna nequeat
pro illo imponi, quàm ipsum delictum promeretur; Nam
ultra quòd tali confusione pœnam bannimentalem absorbenti
repugnant supra tradita respectu Coadunationis, & con-
trariam firmanr Doctores adducti in præterita responsione
§. *Nec delationis*, & in contrarium allati procedere possunt
quoties agitur de insultu, vel homicidio in rixa patrato, vel
ad propriam defensionem, aut ex causa honoris inconrinenti
reparandi, in quibus terminis loquitur *Matth. Sanz. de re
Crim. dist. controu. 11. num. 46.* Cestat in calu nostro difficultas
ex clara dispositione Bannimentorum explicitè declarantium,
& iubentium, quòd pœna delationis armorum non confun-
datur cum pœna delicti cum illis commissi, pro qua vitanda
non videtur sufficiens responsio tradita per D. Pauperum
Procuratorem, quòd cum illa recipiant interpretationem
passiuam à lure communi, cuius sanctione inspecta vnicum
delictum consideratur præparatio, & delatio armorum ad ef-
fectum patrandi cum ipsis homicidium, secus si arma defe-
rantur

rantur non ad malum finem, & deinde cum illis aliquod delictum committatur; Quoniam nimis asperum foret, quod maiorem pœnam pateretur arma deferens non ad malum finem, & deinde cum illis delinquens, quàm eadem præparans ad delinquendum, & etiam adhuc effectum deferens, itaut nunquam talem interpretationem recipere valeant Bannimenta, quibus, dum verita fuit delatio armorum utpotè perniciosa, & occasionem delinquendi præbens, multò magis prohibita, & rigorosa pœna plectenda existimari deber delatio ad delinquendum ordinata maxime attenda declaratione, quòd delicta non confundantur.

Superest tandem alia qualitas summoperè delictum aggravans, violatio scilicet domus assignatæ pro Carcere cum consensu D. Abbatis Franceschini. Absque eo quòd allegari valeat ignorantia huius circumstantiæ, dum in dicta scriptura Italico idiomate exarata pro tradenda sincera notitia facti asseritur, quòd eidem fuit à Fratre relicta, & commissa omnimoda sollicitudo huius Causæ, dum ab Vrbe discessit, itaut prorsus incredibile sit, quòd non fuerit ab eo de re tam relevanti certior redditus, & quoad discrimen inter violationem publici Carceris, & simplicis custodiæ in domo sub fideiussoribus, & licitam in eo quoque offensionem ex causa honoris, satis fuit in præterita responsum §. *Quibus accedit cum sequent.*, quòd eadem utriusque est ratio, cum in utroque detentus maneat sub protectione Principis cuius proinde maiestas læditur, & quòd excusatio procederet, si agatur de propulsanda iniuria in carcere illata, & in his terminis loquuntur auctoritates per D. D. Defensores adductæ, ut constare potest ex illarum recognitione.

Cum ergo in præsentem tot gravissimæ concurrant qualitates delictum extollentes, propter quas D. meus Pauperum Advocatus pœnã exasperandam esse admittit in §. *Agnoscat Fiscus*, & talis exasperatio non nisi de pœna Capitali verificari possit; nam aliàs solum Homicidiũ Vxoris ex intervallo paratũ quatenus etiã probatũ fuisset Adulteriũ, quod in casu nostro nullatenus fuit probatum, iuxta mitiorem sententiã unicã exposcere posset minorationẽ satis assera, & à contrarijs vindicata dici debet Iustitia Decreti pro Tormento vigilia, itaut accedente

**cedente confessione pro tanti facinoris expiatione condigna
poena inferenda remaneat.
Quare &c.**

**Io: Baptista Bottinius Fisci, & R.C.A.
Aduocatus.**

Illustriss. & Reuerendiss. Dño
Vrbis
G V B E R N A T O R E

In Criminalibus

Romana Homicidiorum
cum qualitate.

P R O

Fisco.

C O N T R A

D. Guidum Franceschinum,
& Socios.

Replicatio Iuris D. Aduocati Fiscalis.

ROMÆ, Typis R. Cam. Apost. 1698.

Romana Homicidiorum cum qualitate.

Ill.^{me} Dñc. **D** Educta per D. meum Pauperum Aduocatum ad defensam D. Guidonis Franceschini inquisiti de tribus homicidijs cum grauissimis qualitatibus eadem extollentibus suadere non valent. Ipsum non esse ordinaria poena Legis Corneliae de Sicar. plectendum, quatenus de illis confessus reperiretur, & habenda super ijs veritate relicto tormento vigiliae, simplicem torturam esse irrogandam, vt singulis respondendo, quantum maxima temporis angustia patitur, Fisci partes, vt mei muneris ratio postulat, & criminis atrocitas, & immanitas exposcit, tuendo, ostendere conabor.

Præcipuum itaque Domini mei assumptum consistit in parificando casu vindictæ incontinenti per Maritum sumptæ cum nece Adulteræ in turpitudine depræhensæ, ac eū interuallo captæ, quoties de adulterio Vxor conuicta reperitur, vt verificari prætendit in casu nostro, sed illud tam in facto, quam in iure corruit, et ideo illatio ex eadem paritate desumpta pro moderatione poenæ pariter insubsistens detegitur.

In facto siquidem prorsus deficit probatio prætensi adulterij ex latè deductis in alia mea Informatione, in qua singulas eius præsumptiones, seu potius suspensiones ex Processu, ad quem relatiuè se habet D. meus, resultantibus confutauit, ostendendo, fugam arreptam per vxorem in societate D. Canonici Caponsacchi prætensi Amasij ex legitima causa, imminens vitæ periculum, quod ipsa timebat, non ex illicito libidinis impulsu processisse, quod vtique suadere debet participatio, et complicitas in eadem promouenda D. Canonici de Comitibus, et D. Gregorij Guillichini affinium Inquisiti, quod vtique non præstitissent, si malum finem violandæ fidei coniugalis in ipsorum quoque dedecus cessisset, sed quia benè agnoscebant remedij necessitatem, illudque periculo vacare, vt deponit Testis fiscalis de auditu à D. Gregorio in eodem Processu super fuga, ei quoque ad executionem perducenda suam operam admiscuerunt.

Non releuante, quod in Decreto condemnationis eiusdem

A

D. Ca-

D. Canonici ad relegationem in Ciuitate vetula inſcriptus fuerit titulus carnalis cognitionis , quia , vt fuit præuentiuè reſponſum , demandata fuit illius moderatio , et ſubrogatio generalis tituli ad Proceſſum relatiui , et cum ex Proceſſu eius indicia non reſultent , vel ex deſenſionibus , quas infelix Vxor cum ſimplici cautione de habendo Domum pro Carcere dimiſſa , facere potuiſſet , niſi aded immaniter necata fuiſſet , cum d. decretum fuerit emanatum ea non vocata , neque audita , prorsùs eliſa remanſiſſet , inſcriptio facta per Iudicem poenes acta de titulo delicti eius ream efficere non valuit , ſed veritas facti ex probationibus reſultans eſt attendenda , vt per *Tex. in l. famoſi S. hoc autem crimen ff. ad l. l. iul. Maieſt. tradunt Maſtrill. de indult. gener. cap. 29. num. 19. verſ. 3. confirmatur Franc. deciſ. 330. num. 6. ibique Viſcont. in addit. Reuerendiſſ. Verulan. ad Statut. Fauentin. lib. 4. rubr. 14. num. 14.*

Fateor quidem aliqua excuſatione dignum exiſtimandum fore D. Inquiſitum , ſi Vxorem in actu depræhentionis eiufdem in fuga cum prætenſo Amatio necaſſet , cum ad hunc effectum nedum veritas , ſed etiam ſuſpicio patrati adulterij ſufficiat , vt ex gloſ. in *l. Diuus Adrianus in figuratiōe Caſus ff. ad leg. Pompon. de Paricid.* tradit D. meus , ſed dum neglecto prætenſo Iure priuatæ vindictæ , publicam implorauit , illam arreſtari faciendo , utique ampliùs non poterat ea manente ſub publica Iudicis poteſtate priuatam vindictam ſumere illam trucidando nil tale timentem , ſuſpicio ſiquidem iuſti doloris excitatiua , quem temperare difficile eſt , excuſat à quanto , ſi non à toto , quotiès ex inconſulto impetu iræ Maritus vltionem incontinenti ſumit , non etiam quando ex interuallo , et cauſa ſub Iudice manente , atque Vxore ad ipſius instantiam carcerata id præſtat , vt infra probabitur , oſtendendo irrelevantiam principalis aſſumpti .

Neque obſtat *Glaſſ. in alleg. Text. in l. Diuus Adrianus* , quia loquitur de filio in flagranti adulterio cum Nouerca per Patrem depræhenſo , et non ex interuallo per Patrem interfecto , vt quamplurimis relatis firmat *Farinacc. conf. 142. n. 16.* & longè diuerſa eſt ratio inter Patrem , et Maritum ex interuallo occidentem , quia vt ſubdit ibi *Farinacc. num 17.* Pater habet in filium maximam poteſtatem , et antiquo Iure poterat etiam illum occidere ; quam certè non habet Maritus

tus

tus , ac etiam lex facilius Patrem excusat , quia semper præsumitur , quod capiat bonum consilium pro filio ex instinctu Paterni amoris , quam confidentiam non habet de Viro , qui facilius esse solet ad concipiendam iniustam suspicionem de Vxore , atque ideò permittendum non est , quod sola suspitione possit illam ex interuallo necare , nec est ob eam nullo modo excusandus , vt considerata ratione adducta per *Tex. in l. nec in ea ff. ad leg. Iul. de Adulter.* — quia pietas Paterni amoris plerumque Consilium pro liberis capit , Mariti verò calor , & impetus faciliè seuientis fuit refrenandus — tradunt *Couarr. in tit. de Sponsal. & matrim. 2. par. §. 7. num. 2. vers. licuit , Decian. tract. crimin. cap. 15. num. 38. in fin. Caball. resol. crimin. cas. 300. num 21.*

Quod adeo verum est , vt non aliàs Pater excusetur nisi vna cum adultero ipsa filia occidatur , vel læthaliter vulneretur ; vt fato potiùs , quam paternæ indulgentiæ mortem effugisse , tribuendum sit , idque non alià ratione per Legislatores inductum est , nisi quia talis dolor ad iram inconsultam prouocans ad excusandum Patrem requiritur vt propriæ filiæ non parcat , quod cum Statutum non legatur per leges de Marito loquentes , manifesta detegitur disparitas inter vtrumque ob nimiam facilitatem suspitionem concipiendi , & contrà Vxorem insæuendi .

Sòlamque suspitionem non sufficere ad hoc vt minuatür pœna Marito ex interuallo Vxorem occidenti constat ex ipsis authoritatibus illum in tali casu excusantibus , quatenus adulterium sit probatum , vel per confessiones Vxoris , vel alijs probationibus , itaut de illo conuicta dici valeat , vt tradunt *Mascard. de probat. concl. 64. num. 8. & 9. Bertazz. conf. crim. 42. num. 10. Caball. resol. crim. d. cas. 300. num. 26. ibi — Vidi in contingentiã facti obseruari , & excusari maritum qui Vxorem interfecerat adulteram , non tamen in actibus venereis repertam , sed talem verè , & realiter existentem , & hoc apertissimè probato — Vnde manifestum redditur ex ipsis authoritatibus per D. meum adductis , non excusari Maritum ex interuallo Vxorem occidentem ex sola suspitione , ex Causa super adulterio adhuc sub Iudice , quem ipse adiuerat , manente .*

A

In

In Iure quoque insubstans detegitur assumptum parificans vindictam sumptam incontinenti, in actu scilicet depræhensionis in adulterio, vel in præparatorijs proximis legitimam suspicionem eiusdem inducentibus, & ex intervallo, quotiès de illo constat, & eo quidem probationum genere, quod adulterium apertissimum reddat. Licèt enim non desint quamplures Doctores pœnam minuendam suadentes ex adducta per ipsos ratione, quod Causa honoris semper vrget, & ad vindictam prouocat, & quod satis dicitur in adulterio depræhensa Mulier de illo confessa, vel conuicta, plena manu congesti per D. meum, & quorum aliquo mox ipse indicauit; Tamen contraria opinio est verior, & in praxi recepta, de qua testantur insignes practici nostri temporis, & in re criminali Peritissimi, scilicet *Farinacc. di. cons. in fin.*, vbi concludit se ita indubitanter de iure credere, consulens ita tenendum esse nisi errare velimus, disertè priùs respondendo rationibus, & autoritatibus in contrarium adductis, & D. Canon. Rainald. qui etiam Procuratoris Pauperum munus summa cum laude expleuit, & ideò credi potest quod ad pietatem, & commiserationem fuerit summoperè procliuus, & ex solo veritatis sectandæ studio huic opinioni adhererit, quam veriore appellat, & magis Reipublicæ proficuum, nec ab ea in iudicando recedendum esse, vt tradit in suis obseruat. crimin. cap. 2. §. 4. num. 155. & cap. 7. in rubr. num. 118. & seqq.

Sed quatenus etiam confictus autoritatum posset aliquo modo Inquisito suffragare pro minuenda pœna, si solus excessus in tempore concurreret, prorsùs tamen in excusabilis existimandus est, itaut non valeat pœnam ordinariam effugere, dum tot qualitates delictum extollentes concurrunt, quarum vnaquæque de per se pœna mortis plectenda esset.

In primis quippe considerari ad hunc effectum meretur coadunatio Armatorum perniciosissimum publicæ quieti delictum conuenticulæ constituens, in Bannimentis cap. 82. damnatum pœna ultimi supplicij respectu authoris cum declaratione, quod sufficiat quatuor Armatos fuisse congregatos ad illam constituendam, quæ priùs fuerat sub eadem

eadem poena prohibita per *Constit. 75. fæl. rec. Sixti V.* eã extollendo ad crimen rebellionis, ex quacumque causa fieret, vt latè probat *Spad. conf. 25. per tot. lib. primo*, asserens illam esse generalitèr intelligendam in omnibus casibus, in quibus prohibita coadunatio fieret.

Pro quo effugiendo, vel capitali poena euadenda, non releuat excusatio, quod licitum sit Marito etiam coadunatis Armatis adulteram Vxorem occidere. Quidquid enim fit quotiès Maritus vult occidere Vxorem in Adulterio deprehensam, quia timere potest, quod Adulter armatus ei resistere valeat, & forsan habeat in sui auxilium famulos; quo casu cum aliter vindictam exequi non valeat, quam auxiliares conuocando, vt monet *Caball. dict. cas. 300. num. 58. & 59.* vtique in casu vindictæ sumptæ ex interuallo, manente Vxore sub potestate Iudicis, & vigente sola suspitione adulterij, permixta nullatenùs dici potest conuocatio armatorum cum *Constit. fæl. rec. Sixti V. inter ipsius impressas 75.* talem coadunationem prohibeat etiam in casu licito, vt potè publicæ quietis turbatiuam, vt differtè probat *Spad.; conj. 25. per tot. lib. 1.* Adeoque multo magis prohibita, & poena ordinaria tam d. Constitutionis, quam dispositionis Bannimentalis expianda, dum ad finem illicitum, atque damnatum facta fuit, scilicèt occidendi Vxorem, & cum ea Socerum, & Soceram, quod manifestum redditur ex assertione Doctorem excusantium à poena ordinaria Maritum ex interuallo se vlcisentem; & sane nimis ampla strueretur via priuatæ vindictæ legibus exolæ, si postquam Maritus elegit viam vindictæ Iuris, & neglexit prætentam iniuriam vlcisci in actu deprehensionis Vxoris in fuga cum prætento Amasio, excusandus esset illam coadunatis Armatis cum omni securitate ex interuallo sumendo, incautam occidendo sub potestate Iudicis manentem absque vlllo proprio periculo.

Absque eo quod suffragari possit responsio, quod in tantum neglexit priuatam vindictam sumere, quia erat inermis, & Vxor reperiebatur in Societate D. Canonici Viri audacis. & validi; Quoniam sibi imputare debet Maritus si Vxorem cum Amasio fugientè solus, & inermis fuit persequutus; Tunc enim poterat meliori iure Socios assumere, &

armatus eam persequi, & in tali casu coadunatio forsan esset aliquo modo excusabilis, non etiam ad sumendam ex intervallo adeo immanem vindictam; Quinimò considerata ratione, propter quam Maritus adulterum, vel Vxorem occidens mitiori pœna punitur iuxta qualitatem personarum, si vltro in ipso actu sequatur, scilicet inconsulti doloris, qui temperari non valeat, illicita detegitur coadunatio armorum ad id ex intervallo præstandum, quia inconsultus dolor efficit, vt ipse exponat discrimini resistentiæ per Adulterum faciendæ, qui non solet inermis accedere, ratione cuius periculi pœna minuitur, cum illud ostendat Maritum incautè se illi exposuisse ex impetu doloris illum excecante, quod verificatur in vendicta ex intervallo cum omnimoda præmeditatione sumpta coadunatis Armatis, vt nihil mali maritus timere posset sibi euenturum ex illius executione, quæ præparatio nimis repugnat inconsulto dolori, qui temperari non valeat, à quo desumitur excusatio, vt ponderando verba Textuum iu contrarium adductorum respondet *Farin.d.conf.*

141.num.9. & seq.

Secunda qualitas delictum extollens resultat ex genere armorum, quibus homicidia patrata fuerunt, cum sint prohibita in nota Constitutione san. me. Alexandri VIII. nedum quoad delationem, sed etiam quoad retentionem, introductionem, & fabricatiouem ex quacumque Causa etiam sub prætextu militiæ, & executionis Iustitiæ, adeoque multò magis ad effectum adeò impiam, & immanem vindictam sumendi, perdendo integram familiam.

Nec delationis armorum delictum in tali casu confunditur cum principali crimine homicidij, quia cum maior pœna sit pro illa imposita, quatenùs subsisteret excusatio desumpta ex causa honoris, punienda venit delatio armorum prohibitorum ordinaria pœna, vt tradunt *Giurb.conf. 26.num. 1. & conf. 81.num. 41. Caball.caf. 100.nu. 13. Farin. quest. 22. n. 22. & quest. 108.num. 166. Sanfelice.dec. 43. num. 2. & 3.* Non atrentis autoritatibus in contrarium adductis, quia procedunt in terminis homicidij facti ad defensionem, vel prouocatione in rixa, vt declarat *Policard. de præhemijn. Reg. Aud. tom. 2. cap. 6. num. 11. & 12.* Eque vltèrius non applicantur, quia non loquuntur in terminis Constitutionis adeò distri-

ctè

Atè prohibentis tale genus armorum , nam d. Policardus loquitur de Reg. Pragm. præsumente ex qualitate armorum qualitatem delicti proditorij , cuius dispositionem cessare asserit in homicidio ad defensam , vel ad prouocationem in rixa cum distis armis parrato , quæ dispositio toto cælo distat à nostræ Constitutionis Sanctione , quia edita fuit ad omninò exterminandum adeò perniciosum genus armorum .

Tertia qualitas pariter delictum extollens est homicidium parratum ex causa litis , quod ex tota Constitutione fel. rec. Alex. VII. elatum fuit ad erimen rebellionis , & læsæ maiestatis vltimo supplicio , & bonorum confiscatione plectendum , què qualitas respectu necis Petri Comparini , & Violantis eius Vxoris controuerti nequit ex eo , quod Inquisitus in lite victoriam reportasset , adeoque dici debeat parrata ob iustum dolorem iniuriæ ipsi illatæ per suppositionum Partus detectam post celebratum matrimonium , vt dotale Instrumentum infringerent , & per publicationem scripturarum magnam detractionem continentium , ac per conspirationem in fuga Vxoris in perniciem honoris Inquisiti , & totius familiæ , quæ causa vlciscendi iniuriam cum sit grauior , quam causa litis potius illi tribuendum sit homicidium , tanquam isti magis proportionatæ .

Quoniam victoria obtenta respiciebat solum possessorium lite adhuc in petitorio maente , quam Parentes prosecuti fuissent , adeoque illius causa adhuc durabat , & extincta dici non poterat ; Iniuria verò ex qua diuersa causa desumi prætenditur prouenit ex eadem lite , tam circa detectam suppositionem Partus , quam circa detractiones in scripturis contentas respicientes angustiam rei familiaris contra iactatas diuitias , sub quarum spe contractum fuerat matrimonium , & pessimas tractiones , quas experti fuerunt Parentes Sponsæ in Domo Inquisiti , quibus ex conuentione dotali subministranda erant alimenta , cum aliàs de conspiratione in fuga , minusque de complicitate in prætenso adulterio vlla probatio habeatur . Adeoque semper vrgebat causa odij ex lite concepti , quæ non eximit à pena per Alexandrinam Constitutionem inflicta ex quolis iniuriosa fuerit Inquisito , vel in substantia , vel circa modum , quia hæc arguit quidem Causam , quæ in homici-

micidijs præmeditatis semper requiritur, non autem qualitatem litis excludit, imò eam confirmat, dum explicitè ortam fuisse iniustitiam supponitur, alias permitteretur aditus vidiçtam priuatam sumendi, § quod omni iure vetitum est, & præsertim intercedente lice, quia tunc læditur Maiestas Principis, vt probatum fuit in alia informatione
S. Accedit ad exasperandam.

Quarta, & quidem grauissima qualitas desinitur ex circumstantia loci, in quo patratum fuit delictum, scilicet in domo propria eorum, quibus mors illata fuit, & quidem modo insidioso, constringendo consignationem Epistolæ à D. Canonico Caponfaccho transmissæ. Domus enim propria tutissimum cuiuslibet refugium esse debet, vt in alia probatum fuit *S. Plurimum quoque*. Qui sanè modus prodicionem sapit, quæ verificatur nedum patrato homicidio sub specie amicitia, sed etiam quoties cessat in Occiso præcauendi potentia vel obligatio, vt tradunt *Barb. in l. respiciendum S. Delinquent ff. de pen. Matth. Sanz. de re crimin. controu. 30. num. 57. Crauetz. in Anathom. necis prodit S. 10. num. 5.* quæ procul dubio deficiebat in casu nostro, cum miseri Parentes nil tale timere possent ab inquisito in Patria commorante.

Quibus accedit quinta grauissima qualitas pariter desumpta ex circumstantia loci respectu miserrimæ Vxoris, quæ fuerat ad instantiam Inquisiti Carcerata, & cum consensu D. Abbatis eius fratris detenta in domo Parentum loco Carceris, & ità manebat, sub sæcuritate publica, quam Inquisito violare nefas erat absque incurso pænæ læsæ Maiestatis, vt monent *Iodoc. in prax. crim. cap. 18. num. 2. Bonifat. Vital. de Malefic. rubr. de carcer. priuat. num. 8. Matth. Sanz. contr. 17. num. 12. & seqq.*

aque grauissima qualitas delictum extollens enitari non potest ex duplici responsione per D. meum tradita: Prima quod agatur de carcere improprio; secunda quod ex iusta causa causa honoris excusetur offendere, vel occidens etiam in carcere. Neutra siquidem qualitatem excludit, nam improprietas Carceris forsan esset considerabilis si ageretur de violatione illius facta per Carceratum, & ità de vitando eius præiudicio, secus dum agitur de illius fauore ad vindicandam iniuriam eidem in domo
 loco

loco Carceris assignata illatam, causa verò honoris solum prodesse posset, si ad illum defendendum in ipso imperu inconsulti doloris sequeretur offensio in Carcere, in quibus terminis procedere possunt auctoritates per D. meum adductæ, non etiam ad excusandam vindictam ex interuallo sumptam contra Carceratam, & quidem ad instantiam Occisoris, tunc enim qualitas loci summoperè aggrauat delictum, vt potè lædens publicam securitatem, & inuoluens prodicionem, vt in similibus terminis tradit *Matth. Sanz. de re crimin contr. 33. num. 14. 15. & 16. Caball. cas. 13. num. 10. Carpzou. part. 1. in prax. qu. 40 num. 11. cum seqq. Quintilian. declam 274. num. 1. & seqq.*

Ex his cum abundè constet homicidia per Inquisitum patrata habere admixtas tot qualitates illa extollentes, quatenus etiam præponderaret opinio suadens minuendam esse pœnam Occidenti Adulteram ex interuallo, & probatum dici posset adulterium prætensum eo modo, qui ad talem minorationem obtinendam requiritur ab omnibus mitioris opinionis Sectatoribus, adhuc eadem propter dd. qualitates exasperanda esset, & ordinaria pœna legis *Cornelia de Sicar.* omninò irroganda. Ac propterea superfluum videtur agere de qualitate tormenti, cum ex notis facultatibus Illustriissimo D. Governatori concessis, concurrentibus vrgentissimis indicijs, de quibus, vt audio, non dubitatur, sufficiat delictum ordinaria pœna plectendum fore, licet qualitas atrocissimi non concurrat, itaut pro eo non sit exasperanda pœna.

Cæterum nec etiam huiusmodi qualitas deficit, vt potè resultans ex modo proditorio, & ex titulo læsæ Maiestatis ex triplici Capite in casu nostro verificabili, scilicet offensione ex causa litis. coadunatione Armatorum, & violatione publicæ securitatis propter assignationem domus pro carcere; Cum enim per Constitutiones Apostolicas super primo, & secundo ad talem speciem delictum elatum sit, & de potestate Principis id faciendi non sit ambigendum, vt monent *Restaur. Castald. de Imperat. qu. 110. cas. 291.* & de similibus Constitutionibus *Spad. consil. 1. num. 34.* asserens in tali casu illud quoad omnes Iuris effectus tale reputari non est incontrouersiam reuocanda qualitas atrocissimi tali delicto conueniens, vt in præcisus termi-

mis pro irrogando termento *Vigiliae* tradit *Spad. conf. 114. num. 14. & 15. lib. 1.*

Qualitas verò personæ noo permittens pœnam mortis exasperari, vt in criminibus atrocissimis contingere solet ob nobilitatem, non denigrandam ex tali exasperatione infamiam irrogante, quatenus etiam verificaretur, non obstarret, quo minus ad *vigiliae* tormentum inferendum deueniri posset, cum ad hunc effectum sola criminis ratio habeatur non attenda qualitate personæ penę infamiam inferentis executionem impediēte, alias Nobiles nunquam exponi possent tormento *vigiliae*, nec Sacerdotes, & Religiosi, quibus infamiae pœna non infligitur. Nobilitas autem nullum priuilegium tribuit in genere tormentorum præsertim in criminibus atrocissimis, vt monet *Garz. de Nobilit. gloss. 1. n. 17.* & de consuetudine testatur *Farinacc. quest. 41. num. 76. & seqq.*

Quare &c.

Io. Baptista Bottinius
Fisci, & Camerae Apostolicæ Adu.

Magistri. & Reuerendiss. Domino
GVBERNATORE
In Criminalibus.

Romana Homicidiorum
cum qualitate,

P R O

Fisco.

C O N T R A

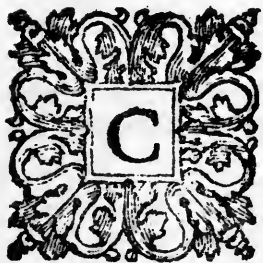
D. Guidonem Francifchinum,
& alios .

Responsio D. Aduocati Fiscalis.

Romæ , Typis Reu. Cam. Apost. 1698.

R I S P O S T A

Alle notizie di fatto, e di ragioni nella Causa Franceschini.



Adde la bellissima Statua di Nabuedonosor perche *pedibus non regebatur*. così à punto precipitarono li figurati estorti supposti co' quali lo scrittore anonimo in fogli impressi cerca d'insinuare nel rozzo intelletto del volgo l'origine dell'effecrando eccidio commesso dentro Roma di trè miseri innocenti da Guido Franceschini assistito da quattro huomini armati d'armi prohibite à tal'effetto con denari condotti, & à sue spese per più giorni mantenuti con preparate insidie prouenire dal giusto dolore concepito, allora che si vidde per otto mesi auanti mancarsi nella propria Casa in Arezzo Francesca Pompilia sua Moglie, e fuggita in Compagnia del Canonico Caponfacchi dal medemo luogo per ricouerarsi in Roma sotto il patrocinio di Pietro, e Violante coniugi de Comparini, che come figlia l'hauenuo alleuata, e dal sospetto cresciutogli, che nel viaggio precipitoso hauesse con esso rotte le leggi maritali per essergli trouate appresso alcune lettere amorose, dalle quali ne deduceua irragioneuolmente l'adulterio di quella, e con presupporre, che come adultero nè fosse detto Caponfacchi condannato alla relegazione di trè anni in Ciuità Vecchia; per potere con questo mascherato titolo d'onore render men graue il delitto, e d'eccitare la compassione non meno nelle persone idiote, che nell'animo de Religiosissimi Giudici per disporli ad vna pena piu mite, e non corrispondente secondo la legge alla qualità, forme, e circostanze del delitto, e questo in sostanza, è tuttociò che si pretende dall'autore de fogli stampati intitolati notizie di fatto, e di ragioni nella Causa Franceschini, mà però troppo mancheuoli nel racconto della tragica Istoria, che hà diuerso principio, e cagione indipendente dal colorito titolo d'onore, che in essi vien troppo animosamente

A

sup-

Supposto esserli stato tolto dalla Moglie, mentre questa hà sēpre intatta conseruata la sua pudicizia, e ben custodite le leggi dell'onestà coniugale, come euidentemente si mostra in appresso.

Che la dolorosa Carastrofe dell'eccidio di questa intiera Famiglia non sia proceduta come l'Anonimo Scrittore diuulga nelle sue stampe dalla figurata causa d'onore, mà da vn danoso interesse ben può dimostrarsi col riflesso, che à quest'oggetto s'introdusse dal Franceschino l'infauito trattato de Sponsali, con detta Francesca Pompilia, accerratosi, che doppo la morte de suoi Creduti Genitori gli douesse restare vn'molto considerabile valente, e più tosto deve crederli commessa in odio di tre liti pendenti cioè due Civili vna sopra la figliolanza legitima di sua Moglie, e nullità di costituzione di Dote, nel Tribunale della Sacra Rota introdotta da Pietro, l'altra sopra la separazione del Toro auanti Monsignor VicèGerente introdotta da detta Francesca Pompilia, e la terza Criminale in decisa pendente nel Tribunale di Monsignor Illustrissimo Governatore in ordine al preteso adulterio mosso coll'istesso stimolo dell'interesse per guadagnare l'intiera dote, quando quello fosse stato concludentemente prouato in esso introdotta da detto Franceschini, la qual speranza essendo rimasta delusa per mancanza delle proue, che fariano del tutto suanite colle difese, che poteuano farsi dalla Moglie proruppe in vn eccesso così tragico, e deplorabile, che ben scoperte le frodi, e l'ingāni adoprati per far sortire il dettomatrimonio e che ciò sia il vero eccone pronte le dimostrazioni, Se ne staua ozioso in Roma Guido Franceschini fuori del seruijio di vn porporato, col soldo dal quale somministratoli fino allora si era mantenuto, & il suo più frequente mantenimento era in vna Bottega di alcune Donne Perucchiere, doue più volte fattosi intendere essere la sua intentione d'accasarsi con qualche buona dote vantando le grandezze della sua Patria, de suoi natali, e delle sue sostanze di spose la medesima con promesse à proccacciarne l'occasione, e scoperto di esserui questa di detta Francesca Pompilia allora stimata figlia legitima, e naturale di Pietro, e Violante Coniugi de Comparini se ne accinse esso medesimo coll'aiuto dell'Abbate Paolo suo Fratello all'impresa, & vlando l'astuta prudenza, della quale si serui il maligno Serpente allorchè nel
Para-

Paradiso Terrestre per sounvertire Adamo à trasgredire il Pre-
 cetto, e mangiare del Pomo vietato facendo li suoi conti, se
 io vò direttamente ad assaltare l'Vomo, egli come assai forte,
 assai risoluto mi verrà a dar di sicuro la ripulsa, meglio dun-
 que è, che io tenti prima la Donna, che è di natura mobile, e
 di cuore molle, e però diede il primo assalto ad Eva, perche
 poi guadagnata, che hauesse quella per mezzo di essa li sa-
 rebbe stato più facile l'acquisto di Adamo: *primum enim ani-
 mum sexus mollioris aggressus est*, sono parole ingegniose di S.
 Ilario .

Così à punto diuiso il detto Guido coll'intelligenza dell'Abba-
 te Paolo suo fratello, e così à punto gli riuicì , mentre trala-
 sciando di discorrere di detto Matrimonio cò Pietro, dal qua-
 le probabilmente haueua hauuta la negatiua, volle prima ten-
 tare Violante sua moglie, perche coll'acquisto di essa haue-
 rebbe poi con più facilità sounvertito il Marito à prestarui il
 consenso, ne gli fù difficile sorprendere la Donna , peroche
 seppe così bene imprimergli nell'animo le grandezze della
 sua Patria, la nobiltà primaria de suoi natali, e le grosse rendi-
 te de suoi beni patrimoniali sino alla somma di scudi 1700.,
 con lasciargliene nota scritta di proprio pugno ; che essa ne
 restò incantata, e senza prendere altra informazione si pose à
 sconuolgere il Marito con ricauarne da lui il consenso, auue-
 rando quello si legge scritto ne Prouerbij, *mulier Viri pretio-
 sam animam capite*, quando si disse di Mardoccheo, che si va-
 lelse d'Estèr, quando egli volle placare lo sdegno d'Assuero
 con il Popolo , e di Giabbe, che si seruisse della Tecuite ,
 quando egli volle addolcire l'ira di Dauidde col figliolo, e de
 Filistei della Tannatese, quando essi vollero ricauare da San-
 sone lo scioglimento del problema da lui proposto nel Con-
 uiro nuzziale .

La credula , ma ingannata Donna tanto adoprossi col marito,
 che in fine lo ridusse à sottoscrivere li capitoli matrimoniali
 con la constitutione della dote di luoghi 26. di monti, & alla
 morte di detti Coniugi Comparini di tutto il loro hauere
 ascendente, come confessa l'anonimo Scrittore, sino alla som-
 ma di sc. 12. mila, e per renderli li dd. Franceschini Padro
 ancora in loro vita di detto valente si fecero cedere l'vsⁿⁱ
 frutto d'esso consistente tutto in corpi frutti feri di case po-
 in ottimo sito , & in luoghi di monti , col peso però di co-
 durreste

durre detti Coniugi Comparini alla Città d'Arezzo, & in
almentarli, vestirli. e souenirli di seruitio in ciò che fusse
stato loro dibisogno, la qual promessa non era disgiunta dal-
la speranza, che con disgusti, e patimenti, che faria loro con-
uenuto di soffrire restasse accelerata la morte, & esso diue-
nisse Padrone assoluto del loro hauere.

E quantunque Pietro doppo sottoscritti li detti Capitoli, for-
temente ricusasse di venire all'effettuazione del matrimonio
di detta Francesca Pompilia con il sudetto Guido; di cui po-
che buone relationi haueua haute assai differenti dalle pre-
supposte ricchezze, e dalle vantate qualità riguarduoli, on-
de si poteua ben dire di lui ciò, che concluse Persio nella 4.
Satira, *Respice quod non est tollas sua munera Cerdo, Tecum
habita, et noris quàm sit tibi curta suppellex.*

Ad ogni modo il sudetto Guido vnitosi con detta Violante im-
beuta delle sue lusinghe, e carezze, sprezzando ogn'altra
consenso di Pietro di nascosto del medemo, e senza sua sa-
pura contrasse il Matrimonio in faciem Ecclesie con detta
Francesca Pompilia, scoprendo sempre più con detto atto
poco riuerente verso il Promissore della dote la sua auidità
non solo à quella quantità, che gl'era stata assegnata in dd.
Capitoli, ma anco al resto de beni, che Pietro possedea, te-
nendo per certo, che doppo la di lui morte necessariamente
doueua per fidei commissio d'Antenati colare in detta
Francesca Pompilia, già fatta sua Sposa.

Risaputosi doppo qualche giorno da Pietro lo Spofaltio seguito
ancorche vigorosamente riprouasse l'operato; tuttauia, per-
che *factum infectum fieri non potest* per le lusinghe di Violan-
te sua Moglie, e per l'interpositione d'altro Porporato, al
quale seruiua l'Abbate Fratello di Guido. fù il pouero Vec-
chio costretto à beuere il Calice delle sue amarezze venen-
do quasi forzatamente dopo molti Mesi alla stipulatione dell'
Instrumento Dotale, & in vn subito cominciò à prouare gl'ef-
fetti dell'inganno del Franceschini, mentre ne anco per fare
le prime spese dello Spofaltio haueua vn'foldo del proprio,
in modo, che per supplire alle medeme, fù di mestiere con-
tro la voglia di Pietro liberare dal vincolo del fideicommissio
cinque luoghi, e più di Monti, con mandato del Signor Au-
ditore di Monsignor Illustriss. Gouvernatore, e venderli per com-

compire alle medeme , onde chiaramente si vede, che il primario oggetto , che si è hauuto dal Franceschini sù questa pratica è stato d'ingannar , tanto Pietro , come Violante sua Moglie , e la Pouera Figlia per farsi ricco con la robba altrui.

Ne può più negarsi la fraudolenta supposizione delle vantate ricchezze del Franceschini con detta nota di sua mano scritta , e consegnata al Comparini , perche oltre che lo confessa apertamente lo scrittore anonimo , mentre per saluare la complicità nell' inganno anco dell' Abbate Paolo , figura , che questo riprendesse aspramente Guido suo frate lo dell' alteratione di detta nota , ben presto la sperimentarono detti Coniugi Comparini , all'hor che trasferitisi alla Città d' Arezzo , ritrouarono esser molto angusto l'hauere della Casa Franceschini , e furono tali le miserie , che conuenne loro soffrire , e li strapazzi si nel vitto , come nell' aspre pocedure con essi vsate , e constringerli anco conerrarli fuori di Casa , ricourarsi nell' Osteria per albergo , con oggetto d'abbreuiare loro la vita , ò per li patimenti , ò per la rabbia da essi cagionata , che furono costretti doppo pochi mesi à ritornare in Roma , e più euidentemente resta prouato dalle fedeli Catastri estratte da publici libri della Città d' Arezzo , dalle quali risulta , che detto Guido non possiede nè pure vn' soldo de beni stabili espressi in detta nota , come pure non esser vero goder esso , e la sua famiglia il primario ordine della nobiltà della sua Patria , atteso , che da altre Partite estratte da publici libri di detta Città , si vede , che la sua famiglia è riposta nel secondo ordine .

Le sudette forme dolose , e fraudolenti di trattare , poste in luce molto prima , che seguisse l'eccidio , e publicate in questa Corte , & in Arezzo , possono ben dirsi esser stata l'origine della premeditata strage con modi così detestabili , com' è notorio , e non il colorato titolo d'onore ; mentre dette loro frodi , come sopra diuolgate , operarono nel commun' concetto d'esser non meno l'Abbate Paolo , che il detto Guido suo fratello , stimati per huomini di raggio , e d'inganno , che ad essi si rendeuà più sensibile , che ogn' altra cosa , atteso , che non poteuano più vantare quelle grandezze di nobiltà , e quelle affluenze di ricchezza , che essi disseminate haueuano nelle bocche del volgo , & ogn'vno si guardaua dal trattar con loro come soggetti di fede non sincera , e come

vsurpatori di quelle glorie, che per niun' dritto erano loro dovute.

Maggiormente s'accese la cupidigia dell' interesse all' hora, che si vidde auerarsi ne fratelli Franceschini l'assioma commune *ars deluditur arte*, cioè à dire, che stimolata dal rimorso della coscienza Violante, e dalli strapazzi, & ingiurie ricevute in loro Casa, costretta per comando del Confessore in occasione del Giubileo à rivelare à Pietro suo marito non esser detta Francesca Pompilia loro figlia, mà d'essere vn' parto supposto, il che si scuopriua molto verisimile sì per l'età d'anni 48. che correua Violante quando si finse di lui gravida; sì perche in anni 14., che haveua vissuto in legitimo matrimonio con esso, mai haveua hauiti figlioli; sì anco perche da Testimonij all' hora viuenti si poteua hauere la proua concludente della suppositione di detto parto, e di ciò datane notizia al medesimo Paolo per venire à qualche aggiustamento sopra la retrattione della constitutione della dote di tutto il suo valente patrimoniale, egli sprezzando l'amichenoli offerte fatte per mezzo di persone amoreuoli, ricusò ogni partito d'accordo, onde intimatogli da Pietro il monitorio sopra la suppositione di detto parto, e nullità di constitutione di dote auanti Monsig. Tomatis fatta concludente proua con sei Testimonij esaminati con gl' Interrogatorij dati per parte di detti Franceschini, benchè il medesimo Giudice, fusse di parere spedire la Causa nel solo sommarijsimo possessorio, con concedere la manutenzione à detta Francesca, Pompilia in *quasi possessione filiationis*, nientedimeno tù dalla di lui sentenza interposta l'appellatione, e commessa alla Sac Rota Ponente Monsignor Molines, oue anco pende indecisa sopra il principale punto della supposta figliolanza, e nullità di constitutione di Dote, dal reuerso no giudicio di tanto Tribunale senza dubio atese le concludentissime proue sudette della suppositione del parto, si farebbe decisa non meno la nullità della constitutione di detta Dote, che fatta d'ichiaratione esser detta Francesca Pompilia di loro figlia, supposta, con che veniua à cessare quel vantaggio, che con tanto inganno li Franceschini haveuano procurato à loro comodo.

Si comproua tutto ciò con il riflesso, che publicatosi non meno in Roma, che in Arezzo l'inganno del Franceschini, deluso con

con simile artificio per le proue già fatte nella pendenza di detto giudicio, che detta Francesca Pompilia non era figlia legitima, e naturale di detti Coniugi Comparini sotto mendicati sospetti affettava Guido la causa di maltrattarla con ingiurie, & percosse, e più d'vna volta s'accinse con ferro, & armi da fuoco per toglierli la vita per vindicarsi contro di essa dell'inganno proprio, dal quale restava deluso, onde conuenne alla pouera moglie in età tenera all' hora di sedeci anni, in Paese straniero, per euitare la ferezza del marito in diuersi tempi fuggirsene all' Asilo di Monsignor Vescono, e del Governatore, ò Commissario della Città, perche ponessero freno alli strapazzi, che soffriua, e benche li medesimi con il loro zelo per all' hora procurassero, che fosse data qual' che tregua alle minacce tuttauia la pouera Moglie in timorata passaua li suoi giorni racchiusa dentro vna stanza, e maggiormente crebbe il timore, perche si auuidde, che il detto Guido haueua fatto preparatione d'acquetta con la quale pretendeva toglierli la vita senza strepito d'armi, & esser più sicuro di far rimanere impunito il delitto. Hor se dunque in questo tempo, oue nõ cadeua alcun' ombra di sospetto d'honore, il Marito machinava la morte della Moglie, poteua astenersi l' Anonimo Scrittore d'imbrattare le carte à fine di persuadere, che la strage dell' Occisi habbia haura la sua origine dallo stimolo di riparare l' offeso honore. Meglio assai più hauerebbe fondate le sue stampe, se si fosse consultato con il vero, che questa sia proceduta dall' interesse deluso.

Agitata dalle raccontate angustie se ne stava la pouera moglie meditando di raccogliere lo scampo della temuta morte; & apertosegli l'intelletto dalla vessatione, si raccomandò al Signor Canonico Conti strettissimo congiunto del Franceschini esponendogli le sue miserie, li suoi pericoli, li suoi giusti timori, ancor che ad esso non ignoti, perche procurasse di consolarla con metterla in saluo della sua vita, & egli toccato da viva compassione, e mosso à pietà per lo stato lagrimeuole, nel quale ella si trouaua per èsimerla, dal quale ben conosceua non esserui altro scampo, che la fuga dalla Casa del marito, appigliandosi al detto del Poeta *Heu fuges crudelis terras, fuges litus auarum*, mà non potendo in ciò egli medesimo darle aiuto, le suggerì, che non vi era per ciò esegui-

re persona più al proposito del Sig. Canonico Giuseppe Caponzacchi suo amico, & anco attinente, il di cui spirito haurebbe superato ogni cimento, e con esso parlatone il Conti, con tutto che trouasse difficoltà in secondare il desiderio della giouine, per non incorrere l'indignatione de' Franceschini, tuttauia preualle in lui lo stimolo della carità, e pietà di sottrarre dalla morte vna innocente Donna, e riferitale dal Conti l'applicatione di quello all'impresa non mancò la medema infiammarlo con più sue imbalsiate, lettere contenenti anche vezzi allettatiui all'effettuacion del suo scampo, conseruando però anche in essa la costante volontà di non violare la fede maritale, mentre in alcune loda il medesimo Canonico per la sua castità, & in altre lo rimprouera per hauerle mandate alcune ottaue poco oneste, auuertendolo di non degenerare dal contegno, del quale si pregiua, e concertauasi con quello la fuga, mentre il marito, e tutti di sua casa dormiuano, si posero ambedue con l'assistenza di d. Canonico Conti a vn precipitoso viaggio per le poste senza perdere vn momento di tempo, se non quanto occorreua per la mutatione de' Caualli, & arriuati di notte a Castelnouo, ancorche l'Oste hauesse preparato vn letto da riposo, niente dimeno d'esso non se ne seruirono, perche il Caponzacchi accudj sempre in sollecitate il Vetturino à preparare altri Caualli per proseguire, e terminare il viaggio, nè l'Oste di d. luogo esaminato nel Processo sopra la fuga si sognò mai di deporre, che nel letto apparecchiato dormissero insieme la Donna, & il Caponzacchi, benehe con suo dishonore il Franceschini habbia publicato il contrario, per colorire colla supposta causa dell'onore la vera cagione della strage da lui commessa.

Sopragiunse in tanto il marito Franceschini, e vedutosi dalla moglie, forse questa timida, si ritirò, si nascose come rea d'alcun mancamento commesso, d'alcun torto fattogli nel custodire il candore della sua pudicitia? no; mà ardita ancorche in età tenera già riferita d'anni 16. gli rimproverò la constanza del suo honore, gl'inganni, e strapazzi, che gli haueua vlati, le minaccie accompagnate colle percosse, più volte dateli; li veleni, & acquette preparate per toglierla di vita, e che perciò era stata costretta à quella resolutione di procurare colla fuga lo scampo da maggiori pericoli, con-

ricor-

ricorrere alla pietà di dd. coningi Comparini, che come loro figlia l'haucuano alleuata, custodendo però sempre intatte le leggi coniugali, e l'istesso rimprovero fù fatto dal Canonico, il quale haueua nella fuga religiosamente offeruate le misure d'vna douuta modestia.

Che rispose, che tentò il Franceschini, ancorche armato di spada, alla moglie inerme, & al Caponzacchi, che non haueua seco, che vn piccolo spadino? Niente al certo, secondo che deposero li Testimonij, che si trouorno presenti, perche restò dalle giuste rimostranze della moglie conuinto; Ma che oprò? Derelitta ogni vendetta, che per dritto di legge naturale, ò anco ciuile molto meglio comperergli poteua di quello, che vada l'Anonimo Scrittore vantando in discolpa di così esecrando delitto, implorò il braccio della giustizia, facendo arrestare dalla Corte di quel luogo la moglie, & il detto Caponzacchi, che poi à sua istanza furono condotti prigioni nelle Carceri di Monsignor Illustrissimo Governatore di Roma, auanti di cui querelò li medemi della fuga, e poi non contento, esposè altra querela di supposto adulterio commesso con detto Caponzacchi, s'auanzò anche maggiormente con fare strepitoso ricorso al Sommo Pontefice per il castigo di quelli, è rimesse le sue suppliche all'istesso Mons. Governatore, ardì con nuoua querela domandare, che fusse la moglie dichiarata adultera, e che a lui si douesse secondo le leggi il guadagno di tutta la dote, il che in sostanza ben fà conoscere, che non insisteuà per la riparatione dell'onore, del quale haueua trascurata la vendetta, ma tutto si operaua per solo oggetto dell'interesse, cioè di guadagnare la Dote.

Quali tentatiui, quali esclamationi, quali diligenze non hà adoprato il Franceschini, e l'Abbate Paolo suo Fratello per far dichiarare adultera la moglie, e conseguite il lucro bramato? Sallo Monsignor Illustrissimo Governatore, che con tanta sofferenza sostenne le loro appassionate premure. Sallo il Sig. Venturini Giudice della Causa, e lo fanno bene anco tutti gl'altri Giudici, e Notari del Tribunale, che nauicati erano dalle loro importunità. Indi perche la giustizia non poteua in verun conto colpire a loro disegni, mentre dal Processo non costaua d'alcun reato della moglie, nè dal detto Caponzacchi, arbitrando rigorosamente nel prudentiale

li Religiosissimi Giudici più per dare qualche sodisfattione
alli Fratelli Franceschini nelle loro premurose istanze, che
per dritto di giustitia diedero vna relegatione di tre anni à
Ciuita vecchia al detto Caponzacchi, che prontamente obe-
di senza essersi mai partito dal luogo destinatogli; e rima-
nendo anco indecisa la Causa rispetto alla Donna, che loco
Carceris era stata collocata nel Monastero delle Scalette,
dubitandosi della sua grauidanza con altrettanta prudenza,
fù quella d'ordine di Mons. Illustrissimo Governatore leuata
dal Monasterio, non comportando il decoro, che dentro di
esso partorisce, e riposta con il consenso di detto Abbate
Paolo in Casa di dd. Coniugi Comparini con la sicurtà di
sc. 300. d'hauer quella per sicuro carcere.

Con troppa animosità sù questo punto ridarguisce il detto
Scrittore Anonimo quello, che dottamente scrisse Monsignor
Fiscale, non esservi interuenuto il consenso di detto Abbate
Paolo, essendo, come ad ogn'vno è nota la di lui somma, &
incorrotta integrità, di non seruirsi di parola nel suo scriue-
re della quale non gli consti con proua, più che sicura, co-
me euidentemente gli constaua il fatto di detto consenso,
mentre l'Abbate Paolo alla presenza propria così restò d'ac-
cordo con Mons. Illustrissimo Governatore, e col Sig. Ven-
turini Giudice vnitamente, con esigere l'obbligo di Pietro
Comparini di somministrare gli alimenti senza speranza di
recuperarli, come fù eseguito con detto concerto, non meri-
tando la loro qualità vn rimprovero così indecente per esser
stati troppo indulgenti con essi.

Con altrettanta animosità si nega non hauer detto Abate Pao-
lo mandato di Procura sufficiente da Guido suo Fratello di
prestare simile consenso, perche in prendere detta prouisione
Mons. Governatore non haueua di bisogno di consenso
delle Parti, e se hà voluto vsare con esso vn'atto di conue-
nienza, & vrbànità, non doueua a questo lo Scrittore corri-
spondere con tanta inciuiltà di ridarguirlo di mal fatto per
mancanza di sua procura, venendosi con tal procedure a
canonizargli da se medesimo, che hà voluto anco ingannare
Mons. Governatore in acconsentire ad vna cosa, che non
haueua in facultà di fare, mà ne resta conuinto, perche d.
Abbate Paolo era il manipolatore di tutti gl' Atti che si face-
vano, nè si moueua vna paglia senza la sua assistenza, & esso
era ben prouisto di più mandati di procura del Fratello, dalli
qua-

quali risulta vn'amplissima facoltà d'operare, come che fusse la persona propria del Fratello, con la clausola de raro, della quale ogn'vno sà l'efficacia; E ciò si confessa anche dall'Anonimo, mentre asserisce, che Guido nella sua partenza lasciò appoggiata tutta la cōdotta della Causa all'Abbate suo Fratello. Mà ben si conosce con quale oggetto si neghi detto consenso, cioè per potere più animosamente figurare la complicità de' coniugi Comparini alla pretesa d'onestà di Francescha da loro custodita come figlia, la quale si rēdeua troppo inuerisimile, ammettendo il detto consenso dell'Abbate. Non meno animosa è l'asserzione fatta dall'Anonimo, che per pagare gli alimenti somministrati alla Donna, quando stava nel Conseruatorio fosse il denaro sborzato dal Lamparelli, il quale non restasse reintegrato dal Deposito esistente nell'Officio, il quale proueniua dalle monete ritrouate appresso la medesima, ed il Caponzacchi, quando furono arrestati in Castel nouo, che si supponeuano tolte al marito, mentre li sc. 48. in circa, che la Donna confessò d'hauer portati del suo, sono stati intieramente restituiti a d. Abbate Paolo, come costa per sua quietanza fatta negli'Atti, essendo che gli altri fù concludentemente prouato essere di d. Caponzacchi, e subito, che d. Abbate Paolo hebbe riceuuto d. denaro, per il quale continuamente instigaua, se ne partì di Roma per esser a cōcertare la notoria strage, che ne seguì poco dopo. Era però prima preceduto il monitorio ad istanza di d. Francescha Pompilia auanti Mons. Vicegerente sopra la separatione del toro, & assecuratione della dote sborzata, che maggiormente afflisse li Franceschini, perche in esso giuditio si farebbero fatte concludentissime proue delli loro inganni, delle seuitie, delle minaccie, delli veleni, & aquette preparate, dalle quali non n'è restato digiuno d. Canonico Conti, che fù mediatore della fuga, essendo publica voce, e fama in Arezzo, che circa vn mese fà morisse di simil sospetto con che veniua a cessare tutta la speranza, che fin da principio haueuano concepita del guadagno di tutta la robba del Comparini; Onde ogni sano intelletto ben vede, e ben conosce qual sia la vera radice di così temerarij, e lagrimeuoli eccidij, o la causa d'honore, o la scandalosa, e detestabile cupidigia, & auidità; dalla quale naeque l'odio delle liti mosse, & indecise pendenti, che erano per riuscire di maggiore opprobrio di dd. Franceschini, decise che fussero a lor danno.

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In vano perciò s'affatigano tanto lo Scrittore, come anco gli altri suoi Difensori ad esagerare la causa dell'honore, mentre quando anco questo gli fosse stato tolto dalla moglie, che non ha veruna sussistenza, come pienamente è stato dimostrato nelle Scritture fatte per parte del Fisco, ritorcendo le medesime lettere, dalle quali si deduce la proua più rilevante in contrario ha il Franceschini col proprio fatto rinunciato al dritto di ripararlo, all'hora che non lo vendicò quando la sopraggiunse nella detta Osteria di Castel nouo, non giuandogli la scusa d'esser esso inerme, perche seco haueua pure la spada, e forse altre armi di nascosto, non essendo verisimile, che si volesse porre ad inseguire la moglie accompagnata dal Caponzacchi, senza esserne prouisto, tanto più, che li fuggitiui erano ancor essi inermi, e solo forniti d'un piccolo spadino, e più tosto volle eleggere la strada giudiciale con farli arrestar da sbirri, e poseia porgerne contro d'essi querela per il castigo, con implorare anche il rescritto del supremo Pontefice, rimettendo le sue suppliche alli Giudici della causa, auanti li quali (ilche ben discuoopre l'intentione del medesimo, essendo motiuo del tutto insuperabile) specialmente fece istanza giudiciale del pagamento del prezzo dell'honore supposto toltoli, e si dichiarasse hauer egli per l'adulterio della moglie superlucrata la dote? se dunque in giudicio ha domandato il prezzo del suo honore, come può dirsi, che per honore gli fosse lecito di commettere sì enormi eccidij?

Atteso, che quantunque fosse stato lecito al marito per causa di honore di occidere la moglie per ragione di legge naturale, o sia anco ciuile, cessa questa potenza, e facoltà, quando il marito vi ha rinunciato con implorare come sopra il braccio della giustitia, come lo dimostrano le querele esposte, il ricorso fatto al Papa, il premio domandato del suo honore, con le quali giudiciali istanze senza dubbio ha hauuto per derelitta la vendetta priuata dell'honore, che gli poteua competere, e per vna tacita rinunzia restò quella estinta, come dottamente insegna il *Prob. ad Monach. in cap. licet Clerici num. 7. & seq. de Cleric. coniug.* e per il testo espresso in *cap. ex ore sedentis §. quia verò de bis, qua fiunt à maior. part. capit.* non potendosi ammettere, che l'attione giudiciale intentata dal Franceschini non fosse per operare la rinunzia alla vendetta
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del suo honore, mà gli fosse permesso praticare l'vna, e l'altra, e seruirsi di quell'attrione, che miglior gli fosse parsa, perche ciò è contro il Testo espresso nel cap. *ut qui duas de elect. in 6.*, il quale viene così sommato del celebre Canonista Gio: Andrea ibi, *non potest electus duas electiones prosequi petendo confirmationem ex illis. etiam si protestetur se contentum altera, per quam possit consequi sua intentionis effectum, , necesse ergo habes alteram eligere, qua electa, ad alteram redire non poterit,* e più chiare sono le parole dell'istesso Testo ibi, *Regressus ad aliam, cui per electionem alterius renunciare, sibi ius ex ea non competere profiteri videtur, nullatenus habiturum.*

Mà quando anche potesse giudicarsi permessa questa variazione da ogni legge aborrita, ne restarebbe destrutto ogni fondamento per la mancanza totale della proua dell'offesa ricevuta nell'honore, non essendouene alcuna nel processo fabricato sopra la fuga; e se bene s'ingegna l'anonimo Scrittore desumerla dalle pretese lettere amorose scritte al Caponzacchi, le quali essendo da Francesca state negate, e non trouandosi riconosciute per scritte di suo carattere, nè di suo consenso, ò da lei sottoscrutte, non puole asserirsi, che ne resti conuinta, nè da esse può risultare proua legitima, come insegna ogni giuridica pratica.

E quando anche fuori di ragione si douessero ammettere come scritte dalla medema, troppo animosa, ed irragioneuole sarebbe l'illazione, che da esse ne risulti vn'attione al marito di occiderla per hauer così scritto? Niuno di sano intelletto restarà persuaso à cõpasionare il marito, che hà proceduto all'occisione della moglie con il solo motiuo, che questa habbia scritto viglietti amorosi, mentre nè con la carta, nè con la penna resta offeso l'honore Coniugale, mà solo con atti d'impura disonestà. de quali nel caso nostro, ne manca ogn'ombra di proua.

Tanto più che ne cessa anche il solo sospetto col riflesso al vero motiuo, col quale furono scritti, cioè d'adescare con simulate dimostrazioni d'affetto il Caponzacchi à scarrarla dall'imminente pericolo della morte, dalla quale non trouaua altro scampo, che con la fuga, hauendone sempre presente lo spauento per lo sdegno, & odio concepito dal marito per le cause

se accennate, e perciò procedendo da detta cagione le lettere amorose, deuno riferirsi à quella, e non à disonesta voglia di macchiare la fede coniugale del marito, come similmente, à detta causa deue riferirsi forsi qualche colloquio, che dalle finestre hauesse hauuto con detto Caponzacchi per concertare il modo di mettere in saluo la vita, e non per offendere, & cimentare la sua pudicitia, e l'honore del marito, onde anco castissime Donne si sono seruite di simili arti, leggendosi nelle sacre Carte, che Giuditta nelle medesime forme ingannò Holoferne per ottenere la liberatione della sua Patria, e così non meno potè esser lecito à questa pouera Donna vnicamente intenta alla sicurezza della sua vita, ad elcare con lettere amatorie il Caponzacchi ad essergli sicuro compagno nella sua fuga senz'alcuna taccia d'inhonestà.

Molto meno può ricauarsi l'offesa dell'honore dall'istessa fuga, perche come si oseruò di sopra, questo segui per detta causa, e chiaramente si vede, che non fù per fare alcun torto al marito, mentre non deuiando in paese sconosciuto, precipitosamente per strade consolari in posta, e senza pernottare in verun luogo si portorno ambedui in Roma, oue la pouera Donna speraua, che li Comparini, che l'hauuano alleuata, come loro figlia, gli hauesero continuati quelli atti di carità, co' quali l'hauuano cresciuta sino al doloroso matrimonio con il Franceschini contratto. E tutto che si vada disseminando, che vn Vetturino deponga d'hauerli veduti baciare per strada, non hà alcun fondamento giuridico, non solo per esser Testimonio vilissimo, & vnico, e deponere di cose inuerisimili, perche douendo esso guidare il Caleffe con quel corso veloce, col quale li fuggitiui proseguirono il viaggio, rendeua si ad esso quasi impossibile il riguardare à dietro, & offeruare dentro vn Caleffe coperto quello, che eglino operauano, tanto più, che la sua depositione è vaga, nè distingue, se li baci, che si dauano era in tempo di notte, ò di giorno, mà molto più si rende equiuoca, & improbabile la di lui depositione, perche in detto corso veloce, che faceua il Caleffe, poteua darli il caso, che nello sbattimento di esso portasse l'accidente, che si vnisse casualmente il viso dell'vno con l'altro, che ad esso poteua parere in atto di baciarsi, come ben spesso succede anco quando non si fa simile cammino, secondo la qualità delle strade, e passi rotti, che si trouano, per il che si rende

rende assai insufficiente , e dubbiosa la di lui depositione per altro ardità , & incredibile .

Come pure ciò , che troppo animosamente! si asserisce dall'anonimo, che giunti nell'Osteria di Castelnouo fosse stato ordinato all'Albergatore si douesse aggiustare vn sol letto per riposo delli fugitiui, e che assieme dormissero, perche l'Oste non hà ardito di deporre nel suo esame, che li medesimi vnitamente giacessero in esso, anzi tanto dalla depositione della Donna, quanto dall'altra del Caponzacchi si esclude la conditione , posciache ne' loro costituiti costantemente affermano , che niuno di loro si mise in letto per riposare , e che solo la Donna sbattuta dall'incomodo , e patimento di sì precipitoso cammino, per poche hore restasse assisa sopra vna sedia rimanendo sempre il letto aggiustato nella forma, che l'Oste l'hauena accomodato, che guasto si sarebbe trouato, quando in esso haueffero riposato , e si comproua anco , che sopragiunto il Franceschini in detto luogo, trouò , che il Caponzacchi staua sollecitando fossero posti all'ordine li Caualli per il proseguimento del viaggio, e non dandosi alcuna proua in contrario, non si può con giusta ragione dolersi il Franceschini dell'offesa del suo honore, che intatto dalli fugitiui li fù conseruato.

Il titolo , al quale similmente s'appiglia lo stesso nomato Scrittore , che il Decreto della condanna del Caponzacchi alla relegatione , sia concepito pro cognitione Carnali , per fomento della causa d'honore, non hà punto di fermezza , perche fù corretto, come non vero, edisonante dalle proue, del che ne sono legitimi Testimonij l'istesso Monsig Governatore , e tutti li Giudici , e Notarij del Tribunale, che interuennero nelle Congregationi Criminali, e se si fa mera riflessione , il titolo della Causa è appunto , come la frasca appesa fuori della porta dell'Osteria , che ben può significare , che in quel luogo si vende il Vino , mà concludere; che quello si vende , sia buono , spacciabile , e recipiente , oh questo nò; Perche si trouarà esserui del punto, matricoso, e d'altre qualità inferte . Si rileggono perciò le Carte , e le proue registrate nel Processo , con le quali si giustifica il delitto, e non con il titolo erroneo , che nè per ombra si riuerrà esserui il supposto commercio Carnale, anzi nè meno sospetto d'impurità, e che nel Processo ne manchi ogni proua ben può com-
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prenderfi dalla leggerezza della pena non corrispondente, alla grauità del delitto, e dall'improprietà di condannare il Caponfacchi come adultero, pendente anche la Cauſa contro la Donna, che non poteua eſſer condannata indifeſa.

Mà per togliere ogni ſoſpetto del preteſo adulterio, ſi prega ogni diſappassionato Lettore à riſettere, non eſſerſi potuto commettere in Arezzo, perche alla cuſtodia del Marito vi ſi aggiungeua quella de' Fratelli, quella della loro comune Madre, quella della Serua, quella de' Parenti, e quella de Vicini, anzi la volontaria prigionia della meſchina in vn' anguſta ſtanza ſempre rinchiuſa, per cuſtodire il ſuo candore nè meno nel viaggio per eſſerſi dimoſtrato del tutto inueriſimile, improbabile, e non prouato, & eſſendo lungi dal vero, come ne pure in Roma, eſſendo notorio, che da Caſtel nouo fu condotta nelle Carceri, e da queſte traſportata nel Monaftero delle Scalette, e poſcia per la ſua grauidanza, ſotto ſigurtà d'hauer la Caſa per Carcere di ſcudi 300. conſegnata à detti Coniugi Comparini, trouandoſi intanto il Caponfacchi alla ſua rilegatione in Ciuita Vecchia, e nella quale ceſſaua ogni ſoſpetto, mentre vi era concoſo il conſenſo dell'Abbate Franceſchini tanto zelante dell'honore del Fratello, e proprio.

Nè ſi può ſenza gran violenza ritenere, , mentre ſi ſente dallo Scrittore eſagerare, che il Caponfacchi uſcito dalle Carceri con la rilegatione à Ciuita Vecchia, in tempo, che la Moglie ſi riteneua per Carcere in Caſa di detti Coniugi, albergaffe in Caſa loro, non potendoſi dire menzogna più ſfacciata di queſta, atreſoche il Caponfacchi non fù mai hoſpite di quelli, e ſubito uſcito dalle Carceri ſi portò al luogo della rilegatione, che religioſamente hà cuſtodito, ſenza mai eſſer ritornato à Roma, nè la Donna uſci dal Monaftero, ſe prima non era giuſtificato à Monſignor Gouvernatore, che quello dimoraua in Ciuita Vecchia, colà conſtituito con fede autentica del Cancelliero di quella Corte.

Mi permetta per tanto il detto Scrittore, ch'io lo rimproneri di troppo ardito nel tacciare l'honore del Franceſchini macchiato dalla Moglie, con dire, che appena ſalite le ſcale della Caſa del Comparini in compagnia delli ſuoi huomini armati per commettere l'eſecrando eccidio, rimiraſſe quelle mura tutte piene de ſuoi ſcorni, come che le dette muri pa-
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reti haueſſero ſaputo Inuentarſi machine d'ingognati penſieri per fomentare la di lui inhumanità ad vna così horribile ſtrage, mentre di ciò non ſe ne porta altra testimonianza di quella eſſo ne ſcriue capriccioſamente ſenz' alcun fondamento, volendolo diſonorato per forza, perche à gli altri diſonori ſe gli cumuli ancor queſto, benche à torto, eſſendo ben poſto in chiaro di ſopra, che la cauſa del commeſſo delitto non fù quella dell'honore per riparare li torti fatti dalla Moglie, mà li ſuoi inganni ſcoperti, il lucro ſperanzato, ſuanito, e le liti pendenti.

Di che ſe n'apporta vn'altra non men conuincente dimoſtratione, ſe l'honore à ciò ſpinſe il Franceschini? non era affai vendicato con la morte della moglie? perche imbrattatiſi prima anco con il ſangue di Violante, e di Pietro non complici della preteſa diſoneſtà? perche hauer teſe l'inſidie per più continuati giorni anco in procurare la morte di quel pio Benefattore, che moſſo ancor eſſo à pietà, ſomminiſtraua loro aiuto nelle dd. liti? in queſto non vi è caduto mai il ſoſpetto del pregiudicato honore, mentre che la moglie ſtaua in Arezzo, & eſſo dimoraua in Roma, e prima ſi maritafſe, non era in età, che di ſoli tredici anni non compiti, e dopo la fuga dal marito ritornata in Roma ſi ſà come reſtaſſe cuſtodita nelle Carceri, nel Monaftero, e poi nella Caſa di dd. Genitori, in tempo, che era vicina à ſgrauarſi; Dunque ſi può concludere auueratamente, che il motiuo dell'occifione fuſſe altro, che dell'honore, mà come diſſe dell'interreſſe, e delle liti, come confeſſa nel ſuo eſame l'iſteſſo Franceschini.

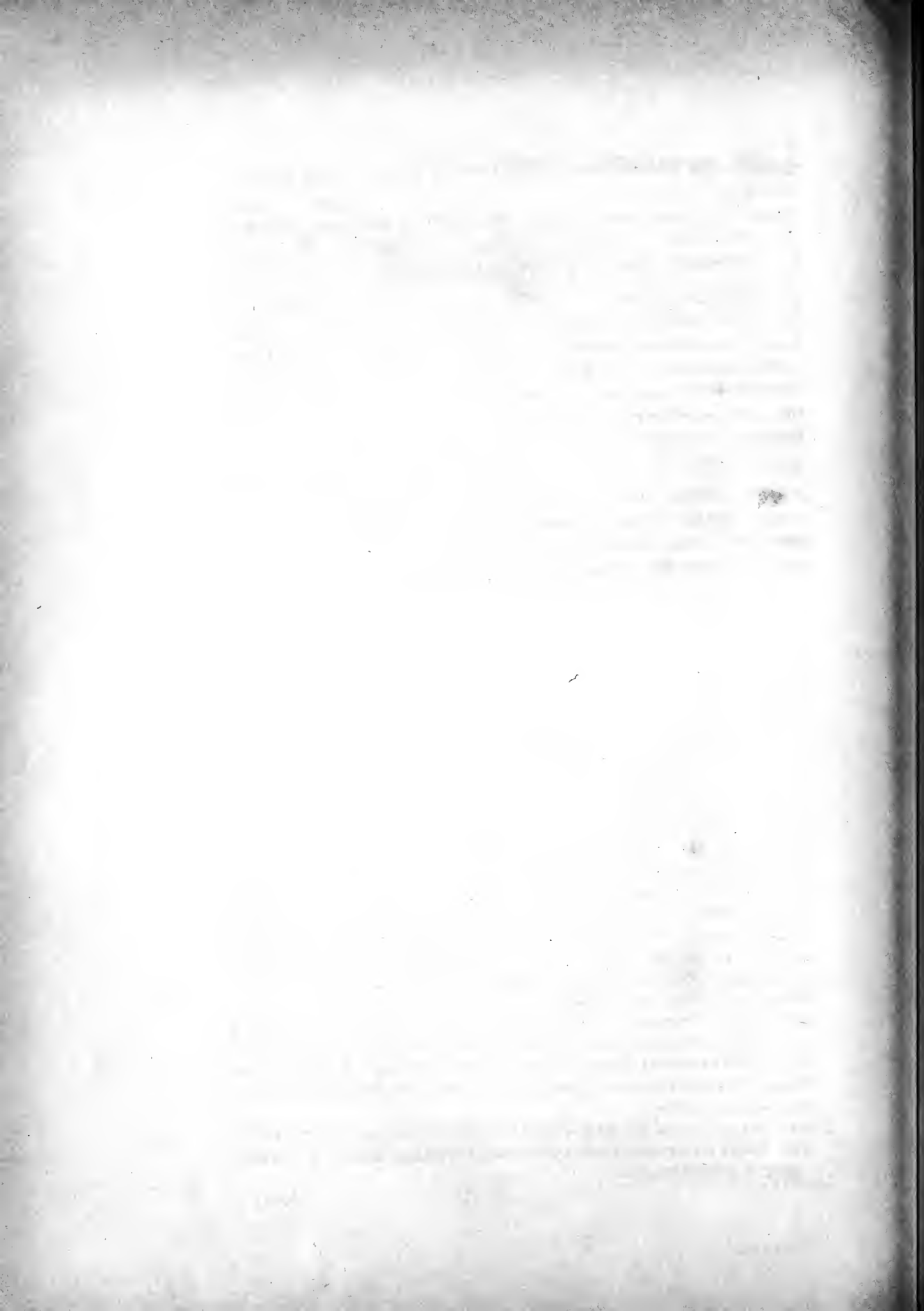
Nè deue ſprezzarſi la dichiarazione fatta dall'iſteſſa Donna' in articolo di morte, all' hora che alla preſenza di molti Religioſi, e Perſone d'intiera fede, conſtantemente ſoffrendo le tante ferite, mantenne, e profeſſò con gran franchezza d'eſſer ſempre viſſuta caſta, e fedele al ſuo Maritoſ, implorando con viſcere di ſomma rassegnatione dalla Diuina miſericordia il perdono d'ogn'altro errore, che di quello haueſſe commeſſo à ſcorno del Marito, non preſumendoſi in quel punto la moribonda mentire in diſcapito della ſalute eterna dell' Anima ſua; Douendoſi ancora riſettere, che in d. fatto vi concorſe vna ſpecialiſſima gratia dell'iſteſſo Omnipotente Dio in far ſoprauiuere per pochi giorni la moglie, acciò potteſſe

teffe far palese la sua innocenza , e dar lume dell'Occisori , senza di che sarebbero andati impuniti li delitti , per ciò nel medemo atto il Franceschini reiteratamente comandò alli suoi Compagni , che offeruassero se era morta bene , e quelli prendendola per le treccie , & alzandola da terra oue giaceua , credertero , che fusse morta , perche la pouera Donna per istinto naturale seppe ben simularlo col suo abbandonamento , come confessano li Delinquenti , e questo concorso di gratia tanto più auuera la dichiarazione della moglie , che resta verificata con la confessione delli medemi Rei delli delitti .

Mi sono riservato per vltimo di discorrere , e rifiutare quello , che il d. Scrittore rappresenta dell'Abbate Paolo , e se haueffi à dire il vero , egli si può con ragione affermare esser stata tutta la pietra dello scandalo , egli hauer fomentato Guido suo fratello à gl'eccidij , egli hauer tramato tutta la machina , atteso , che esso fù quello , che da principio volle à forza con industria , e con inganni il matrimonio di d. Francesca Pompilia , esso fù quello , che sosteneua le liti Civili , e Criminali , che sotto nome de Grandi spacciando animosamente la loro parola , pretendeva d'estorcere con belle insinuationi , con raggiro , e con inganno quella giustitia , che non si doueua ; esso era quello , à cui maggiormente si rendeva sensibile esser stato scoperto per homo di machina , e l'esser stato deluso nel proprio inganno , onde hà ben ragione di dire lo Scrittore , che li volti degl'altri li seruiano di specchio per rileggere le sue male procedure , mà non dell'honore tolto al fratello .

Si tralascia di rispondere à ciò , che l'Anonimo procura di far credere in lode dell'Abbate Paolo Franceschini , per eccitare maggiormente il compatimento , mentre l'intentione dell'Autore della presente risposta , altra non è , che di metter in chiaro la falsità de supposti contro l'onore della pouera Donna , e de Comparini , e di seruire alla giustitia , lasciandone il giuditio à chi n'hà piena cognizione , e per l'istesso riguardo si trascura la risposta à molt'altre improprietà , che dal detto Scrittore inutilmente si dicono senz'alcun proposito , concludendosi la presente risposta coll'esempio da esso allegato di Sansone , che all'ora , che si vidde esposto alle pubbliche burle del Popolo , diede vna scossa alle Colonne del Palazzo , facendolo cadere per morire con gl'altri , e sotto le ruine di quello

quello , per non esser più ludibrio de la gente ; Così d. Franceschini , per non esser più schernito da suoi inganni , conuiene , che con li suoi Compagni paghi la meritata pena de proprij delitti, troppo perniciosi alla Republica, & alla quiete, e sicurezza , {che deuono prouare li Litiganti nella Corte di Roma, per mantenere la quale hà prouisto la vigilanza de Sommi Pontefici Alessandro VII. e de Successori, con la Costituzione sopra di ciò publicata, e co' Bandi successiuamente promulgati ; La santa dispositione delle quali Leggi doueua tanto più rassegnatamente esseruarfi, quanto che haueua il medemo eletta la strada giucitiale , e li ricorsi fatti al Sommo Pontefice Regnante , zelantissimo del giusto , erano stati rimessi à suoi Giudici , di che non senz'vna sfacciata ingiuria poteua dolersi, come pare, che l'Anonimo Scrittore voglia ascriuerlo ad aggrauio, dal quale s'efacerbasse lo sdegno del Franceschini , il che parimente dimostra con qual animo prorrompesse in eccessi così detestabili .



Romana Homicidiorum .

Ill.^{me} & Reu.^{me} Dñe. **O** Missa vltiori decerta-
tione cum Domino meo

Fisci Aduocato super communicatione suarum Allegationum, quia tempus breue est, & magnam eidem obseruantiam profiteor vsque a minori ætate; Transeat, quod vbi agitur de nece inflicta per maritum vxori suæ non in actu deprehensionis eiusdem in Adulterio, sed ex interuallo, sola suspicio quantumuis vehemens non sufficiat ad eximendum à poena ordinaria *legis Cornelia de Sicar.*, sed requiritur liquidissima probatio Adulterij, quemadmodum exaduerso prætenditur, cuius tamen contrarium nos probauimus in præterita §. *Quamquam ad hoc*, & tradunt ibidem non allegati *Dond. consult. 97. num. 16. in fine, Sanfelic. decis. 337. num. 12., Muta decis. 61. num. 2.* vbi quod sufficit, quod reperiantur in mansione soli, & *num. 3.*, præsertim si mulier erat pulchra, *Mascard. de probat. conclus. 61. num. 1., & duob. seqq.*, vbi refert illud Ouidianum

Lis est cum forma magna pudicitia,

Et vir illam desiderabat, prout in præsentì iuxta aliud eiusdem Authoris

A Iuene, & Cupido credatur reddita Virgo?

In præsentì sumus in casu nedum liquidissimæ probationis, sed facti notorij, quia habemus Decretum huius Tribunalis, per quod huiusmodi Adulterium fuit canonizatum, cuius verba quamuis relata in præsentì Informatione §. *Absque eo*, quod placeat hæc repetere, quia sunt nimis clara, ibi -- *Ioseph Maria Caponsacchi de Aretio pro complicitate in fuga, & deuiatione Franciscæ Comparinæ, & cognitione carnali eiusdem relegatus per triennium in Ciuitate Vetula.*

Non autem præterire possum, quod adhuc prætendatur, quod huiusmodi Decretum fuerit reuocatum; quia, vt dixi in Informatione, veritas est in contrarium; solum enim habemus, quod in mandato de excarcerando Canonicum delinquentem, omiſsa relatione totius supra relati Decreti, fuit dictum -- *pro causa, de qua in actis*, quæ verba tantum abest, quod præferant dictam reuocationem, quinimò probent eiusdem Decreti confirmationem, vt firmauimus in Informatione §. *Nec verum est*, quod idem dicendum venit de similibus verbis adhibitis per Notarium in obligatione quam fecit Francisca Pompilia de habendo domum patris pro carcere, cum à Monasterio, vbi securè permanebat, fuit ad illam traducta ex causa suppositæ infirmitatis, sed veriùs dicam, prægnantiæ, quam malo fato voluit abscondere.

Tanto magis, quod ista prætenſa Decreti reuocatio non potuisset fieri altera parte non audita, quemadmodum dixi in Informatione §. *Eoque magis.*

A

Sicuri

Sicuti præterire non possum, quod dicatur Canonicum fuisse condemnatum solum in penam relegationis ob defectum probationis Adulterij; Si enim huiusmodi probatio non extitisset, quo iure potuissent Domini mei Iudices exprimere in Decreto, quod illum condemnabant pro cognitione carnali eiusdem Franciscæ Pompilæ? Veritas itaque est, quod Iudices habuerunt pro concludentissime iustificato dictum Adulterium, & dictum Canonicum de eodem conuictum, cum in Processu nil aliud deesset, quam depræhensio in illo actu obsceno, quam non esse necessariam ad probandum Adulterium, in his terminis scripsit *Afflicti. in Constitutione si maritus num. 4. vers. & pondera. & sequuntur Farinac. quæst. 121. num. 42., Polic. de Reg. Aud. tom. 2. tit. 10. cap. 7. num. 29. vers. ac proinde pag. 34.*

Quod verò pena, in qua fuit condemnatus dictus Canonicus non respondeat dicto delicto, circa hoc plura possent replicari, sed quia id non respicit D. Guidonem, idè etiam hoc paritèr transeat; Vt cumque enim sit quisnam negare potest, quin idem D. Guido perlecto dicto Decreto, quod glossa non indigebat, iure debuerit irasci de violata sibi coniugali fide, & quod si postea de huiusmodi violatione vindictam sumpsit aliquo modo non sit excusandus, *Textus est in l. si Adulterium 38. §. Imperatores ff. ad l. Iul. de Adulter., & in l. si quis in graui §. si quis moriens in fine ff. ad S. C. Syllan., & tradunt Doctores per nos plena manu congesti in præterita §. Et conciliando.*

Et quidem quamuis huiusmodi vindictam sumplerit ex intervallo, vt plenissime fuit demonstratum in dicta præterita Informatione §. *Nec verum est*, ita vt pauci Doctores sint, qui contrarium teneant, & propterea hæreticum ferè sit de veritate huiusce sententiæ dubitare, vt inquit *Socin. sen. cons. 74. num. 8. lib. 1.* præsertim cum illa sit recepta in omnibus ferè Tribunalibus Mundi, signantèr in illo Sacræ Consultæ, quæ normam præbet cæteris Tribunalibus Urbis, & totius Status Ecclesiastici, ita vt ab eius opinione recedere ad instar quoque sacrilegij esse affirmet, *Conciol. alleg. 95. num. 33., & allegat. 97. num. 8.*

Est autem pulchra prætensio velle Adulterij liquidissimas probationes excludere ex dicto ipsius Mulieris de illo conuictæ, & illius occasione, vt ingenuè fateatur Dominus meus Procurator Generalis Fisci, in Monasterio retentæ, cum scilicet non teneretur neque in Articulo mortis detegere propriam turpitudinem, vt probauimus in dicta præsentì Informatione §. *Et querens, & s. seq.*; Et cum ipsa malè, ne dicam pessime vixerit in perniciem honoris, & existimationis sui Viri nullam ei iniuriam irrogamus, si præsumere volumus, quod nec in morte voluerit resipisci, iuxta illud -- *Chi mal viue, mal muore* -- & quia nemo nec in morte præsumitur Sanctus Ioannes Baptista, vt in Informatione §. *Nec valet dici.*

Firmo itaque remanente, quod D. Guido iustam habuerit Causam occidendi, siuè occidere faciendi Franciscam Pompillam

Vxo-

Vxorem ; Idem necessariò dicendum venit quoad homicidia Petri , & Violantis Soceri , & Socrus , quia in Processu fabricato occasione fugæ dictæ Franciscæ Pompiliæ à viro emerfit etiam probatio , quod ipsi conspirarunt in illud idem delictum , consequentèr fuerunt in causa læsionis honoris , & existimationis eiusdem D. Guidonis , quæ etiam honoris læsio ex eo resultabat , quod ipsi supposuerunt , & palàm omnibus fecerunt , quod eius vxor non erat eorū filia , nec legitimè genita , sed filia meretricis , & postea illam receperunt in suam Domum , postquam fuit declarata Adultera , aut enim ipsa erat ipforum filia , & non debuissent hoc Iudicialiter negare , aut verò non erat filia , & nec debuissent illam recipere in suam Domum , postquam fuit de Adulterio conuicta , cum taliter agendo facto ipso declarauerint se eiusdem Lenones fuisse , & esse velle . l. 2. §. Lenocinij l. Mariti lenocinium ff. ad l. Iul. de adult. l. 2. C. eodem , Menoch. de arbitr. cas. 534. num. 23. Farinacc. quæst. 144. num. 94. & 98.

Confessio D. Guidonis cum illa Qualitate , quod homicidia demandauerit ex Causa honoris non potest scindi , sed acceptari debet per Fiscum cum dicta Qualitate , vt probauimus in Informatione §. *Huiusmodi enim Confessio* ; Doctores verò in contrarium allegati per Dominum meum Aduocatam Fisci procedunt in Qualitate extrinseca ab ipsa Confessione , & quæ aliunde non iustificatur , & demùm vbi agitur ad pœnam extraordinariam , quemadmodum & nos admisimus in nostra Informatione §. *Præsertim* .

Sicuti autem Causa honoris releuat Dominum Guidonem à pœna ordinaria homicidii , ita eum releuare debet ab alijs quibuscumque pœnis ordinarijs appositis in Bannimentis , & Constitutionibus Apostolicis contra deferentes arma prohibita , seu committentes alia delicta ; dixi enim , & repeto , quod iustus Dolor , qui eum excusat ab vno Delicto , excusare quoque debet ab alijs , cum semper , & vbique militet ratio , quod ipse non fuerit in plenitudine Intellectus iuxrà latè firmata in Informatione à §. *Agnoscat Fiscus* , vsque ad §. *Quo verò ad Litem* .

Et sicuti ista Causa est sufficiens ad consequendam minorationem pœnæ respectu D. Guidonis , ita pariformiter sufficiens reputari debet ad illam consequendam fauore eius Sociorum , qui tamquam Auxiliatores puniri nequeunt maiori pœna , quam ipse Principalis iuxrà innumeros ferè Doctores , & quidè magni nominis allegatos tùm in præterita §. *Qua dicta sunt* , cum seq. tùm in præsentis §. *Verùm* , & *Socios* , quibus exaducto nullum fuit datum responsum .

Faciliùs verò respectu Blasij Agostinelli , qui nequiquàm falsus fuit aliquem occidisse , seu vulnerasse , sed solummodo adstitisse , vt præuentiuè perpendimus in Informatione §. *Quoad Blasium* .

Et quoad Dominicum , & Franciscum vltra deducta fauore aliorum , ipsi sunt forenses , qui propterea non ligantur Bannimentis Gubernii (quibus non ligantur alij , qui non sunt de Distri-

Qu) nec Constitutionibus Apostolicis Armorum delationem prohibentibus, ut diximus in præterita § *Quæ eo facilius*.

Multò magis cum Dominicus adhuc asserat se esse ætate minorem, prout pro tali fuerat descriptus in Processu fol. 304. & respectu Francisci ultra prædictam descriptionem, de qua in eodem Proc. fol. 35. habeamus fidem Baptismatis, quæ concludenter probat ætatem, *Burratt. decis. 75. num. 1., & decis. 117. num. 20. par. 12. recent.* natus enim fuit die 14. Februarii 1674. quo fit, ut tempore commissi delicti) quod attenditur ad effectum punitionis iuxta *Gloss. in l. sciant v. moritur ff. de legis. hered., Marsil. in l. Infans, num. 13. ff. at l. Corn. ad Sicar. & in l. de minore, n. 40. ff. de quest., Clar. in præc. §. fin. quest. 60. num. 4., Tiraq. de Pæn. temper. caus. 7. num. 8., Menoch. de Arbitr. cas. 329. num. 22., Campan. resol. 2. num. 22.) nondum expleuisset annum vigesimum quartum suæ ætatis; Minori enim viginti quinque annis est pœna minoranda, *l. ferè in omnibus ff. de Regul. Jur., l. aut facta §. Persona ff. de Pœn., l. Auxilium §. In delictis, & l. si ex Causa §. Nunc in minoribus ff. de minoril. cap. hoc sit positum 26. quest. 7., Bartol. in l. quid ergo §. Pœna grauior. ff. de his, qui not. Infam., Marsil. cons. 48. num. 54., Vulpell. consil. 63. num. 10., Prat. respons. Criminu 25. num. 46., Farin. quest. 52. num. 41., & seqq. Odd. de Restit. in integr. par. 2. quest. 80. num. 72., & pluribus seqq., Baron. de effect. minor. atat. effect. 10. num. 1., & seqq., Narbon. de atat. annor. 25. quest. 43. præsertim num. 6., D. Raynald. obseru. par. 2. cap. 14. in Rubr. n. 270, & 274. cum seqq., Thesaur. dec. 161. num. 4., ubi inuebit in Iudices contrarium prædicantes, & nu. seqq.**

Et quidem de necessitate, non autem Iudicis arbitrio, quia huiusmodi pœnæ minoratio procedit ex Beneficio à Iure introducto, & ex Causa intrinseca delictum minuente, *Ancharan. quest. 58. num. 3., & 4. lib. 2., Odd. testans de communi dicta par. 2. quest. 80. num. 93., Farin. dicta quest. 92. n. 163., & 165., Baron. d. effect. 10. num. 14., ubi quod Iudex aliter faciens tenetur in Syndicatu, & numeris seqq., Sabell. alleg. 6. num. 103. post Tom. 2. summa, Prat. respons. crim. 25. num. 46., D. Raynald. dicto cap. 14. in Rubr. n. 288. Thesaur. dicta dec. 161. num. 6.*

Licet verò non desint, qui contrarium sentiant, quod scilicet totum pendeat ab Arbitrio Iudicis, nostra tamen sententia est verior, & receptior saltem in Criminibus, quæ non sunt de atrocissimis, ut distinguendo tradunt *Spad. cons. 110. num. 15. lib. 1., Farinacc. dicta quest. 92. num. 107., Campan. res. 2. num. 26., & 55. ibique Oril. num. 3. 6. & 7., & quod ubi delictum est solum atrox, vel atrocius Iudex teneatur necessitate officii pœnam minorare ultra mox allegatos Thesaur. dicta dec. 161. num. 5.*

Et quod hæc sententia locum habeat in crimine homicidij, non obstante dispositione *Textus in l. si quis te Reum Cod. ad l. Cornel. de Sicar. ibi: Si quis te Reum legis Cornelie fecerit Innocentia purgari crimen non adulta ætate defendi conuenit* - quia dispositio huius Textus taliter interpretari debet, ut nempe minor Delinquens
non

non excusatur in totum, sed tantum minius puniatur iuxta antiquiores plena manu congestos per *Farinac. dicta quest. 92. n. 112. & seqq.* quod idem sentiunt *Guazzin. def. 33. cap. 17. num. 1. Caball. res. crimin. 134. num. 11. Prat. d. respons. crim. 25. sub num. 48. Paschal. de patr. potest. par. 2. cap. 8. num. 22. Thor. compend. decis. par. 3. sect. 2. Thesaur. d. decis. 161. praesertim num. 7. Cortbiad. dec. 92. num. 29. & decis. 96. num. 57.*

Maximè quando, prout in praesenti, minor non deliquit solus, sed in societate aliorum, tunc enim praesumitur seductus, ideoque facilius poena ordinaria eidem venit minoranda *Farinac. d. qu. 92. num. 108. circa fin. vers. & etiam quia, Heffor. Felic. alleg. 36. nu. 6. par. 1. Guazzin. d. def. 33. cap. 17. num. 1. vers. & late ego deduxi. Thor. vot. 10. num. 16. par. 2. Oril. ad Campan. res. 2. num. 8. D. Raynald. dicta par. 2. cap. 14. in Rubr. num. 282 vers. secus quando, & vers. & quod ad minorandam Chartar. decis. crimin. 78. num. 6.*

Nescimus quo se vertere praetendat Fiscus pro destruendis hisce iuridicis fundamentis, quia Domini mei agentes ipsius Partes nec in praeterita, nec in praesenti quidquam motuarunt circa praedicta, quotiescumque verò praetendant hanc nostram exceptionem elidere cum Statuto Florentiae *lib. 1. rubr. 33. qualiter minor 16. annis delinquens puniatur in criminalibus, plures suppetunt responsiones, &*

Primò, quod dispositio huius statuti non extenditur ad delicta commissa extra Territorium dictae Civitatis, sed locus delicti, eiusque statuta attendi debent, istis verò cessantibus, prout in praesenti cessant, quia bannimenta huius Gubernii, vbi agitur de punitione quoad forenses locum non habent ex defectu potestatis Principis, seu Officialis illa condentis ex allegatis in praeterita *S. Qua eo facilius, & S. seq.* tunc delinquens puniri debet secundum ius commune *Bartol. in l. cunctos Populos num. 49. & 50. ibique etiam Bald. num. 45. & seq. Cod. de Summa Trinit. & Fid. Cathol., Farin. pragmat. crimin. par. 1. litt. D. num. 107.*

Secunda Responsio est, quod statutum nil aliud dicit, quam quod minor annis decem, & sex non possit puniri poena ordinaria delicti, consequenter operari debet in hoc casu, quando verò agitur de minore excedente dictam aetatem, sed minore annis viginti quinque, Regula desumi debet à iure communi, à quo dictum statutum in tali casu passivam recipit interpretationem, vt in puncto huius met statuti consuluit *Marcus Asin. inter stat. crimin. diuers. in fol. tom. 2. conf. 110. num. 12.* sequitur *Caball. dicta resol. crimin. dicto cas. 134. num. 11. ad medium, vbi testatur se vidisse ita praedicari penam minori annis 25. maioritatem decem, & octo minorando, & in puncto aliorum similium statutorum resoluunt Anchara. qu. 58. num. 5. & seq. Boss. tit. de confess. n. 69. vers. Consideratio tamen.*

Tertia denique responsio, & quae ponit falcem, ad radicem est, quod iste Inquisitus non est de Civitate Florentiae, nec de eius Territorio, sed de Territorio Aretino, Civitas autem Aretii, eiusque

eiusque Comitatus non ligantur Statutis Florentinorum, tùm quia non sunt Subditi, sed recomendati dictæ Ciuitati Florentiæ, vt in puncto consuluit *Soccin. Sen. conf. 7. præsertim num. 2. & 4. seqq. vol. 1. & conf. 74. quod est Bartholomæi filij sub num. 8. eod. vol. 1.* vbi dicit, quod præcedenti consilio sui Patris se subscripsit seuerus legum Interpret Thomas Docius Senensis; Tùm quia eadem Ciuitas Aretii habet propria statuta *Soccin. Sen. d. conf. 7. num. 7. vol. 1.*

Recurritur enim ad statutum Ciuitatis dominantis, cum aliæ Ciuitates subiectæ non habent propria, secüs si illa habeant per *Text. in l. de quibus 31. ubi Bald. num. 6. & Castren. nu. 2. in fine vers. patet etiam ff. de legib. Socin. d. conf. 7. eod. num. 7. vol. 1. idem Castr. conf. 129. num. 1. lib. 1. Gabr. conf. 29. num. 47. lib. 2. Mendos. in addit. ad Roman. conf. 21 & circa finem, Rot. coram Coccin. dec. 1451. num. 6. & coram Dunoꝝ. Iun. decis. 937. num. 18. & in rec. dec. 107. num. 17. & seqq. par. 15.*

Itaque sunt contraria, velsimul incompatibilia *Gratian. discept. 9. num. 25. Rot. coram Dunoꝝ. Iun. dicta dec. 937. num. 19. & seq. & dicta dec. 107. num. 19. & tribus seqq. par. 15. rec.*

Cuiusmodi esse illa Ciuitatis Aretii respectu aliorum Ciuitatis Florentiæ testatur *Soccin. Sen. d. conf. 7. d. num. 7. vol. 1.* & patet ex *Rubr. de oblig. minor.* vbi mandatur, quod minores 25. annis non possint obligari sine certis solemnitatibus, super qua consuluit *Paul. de Castr. conf. 124. lib. 4.* ex hoc enim statuto satis constat, quod in dicta Ciuitate, & eius Comitatu minor ætas regulatur à iure communi.

Quatenùs verò Fiscus habeat alia fundamenta, quæ ex nostro debili Iudicio diuinari non potuimus, supplico illa benignè communicari, ne Pauper Inquisitus minor remaneat Indensus.

Denique respectu Domini Guidonis supplico animaduerti ad infelicem statum ipsius, & nobilis eius familiz; habuerunt enim omnes de hac familia, eiusque cognatione, quod satis, & vsque ad vltimum vitæ spiritum lugere possint, cum respexerint ad ignominiam eisdem illatam ab hac muliere, eiusque Genitoribus, propter quam, & dubium in præsentem est, quod aliquis etiam Proximior insanuerit, hoc sanè dicat eximia Pietas Clementissimi Principis, & Illustriss. D. mei, quibus ipsemet Inquisitus toto corde se commendauit in suis constitutis, absque eo, quod hoc idem discant ab *Auctore Anonym. Subtus Sanfalsæ. dec. 337. in fine.*

Quarè &c.

Desiderius Spretus Pauperum Aduoc.

Illustriss. & Reuerendiss. D.

**Vrbis
GVBERNATORE**

In Criminalibus.

Romana Homicidiorum.

P R O

**Domino Guidone Francischino, & Socijs
Carceratis.**

C O N T R A

Fiscum.

*Replicatio Iuris D. Aduocati
Pauperum.*

ROMÆ, Typis R. Cam. Apost. 1698

Messa sig. 16 sig. 16 L'vno Colono.

Dardi giunero le Dignificazioni inuicamenti dal V. M^o a' p^o della b. m del sig. Luido frameschini, poiche hauendo determinato la Congregaz^{ve} di Mont^e Lou. che d^ebe sig. Luido foris Reo di Monto non ofanti le Ragioni d^eo ad suo fauore, a' gran fatica dalle medesime ottenni qualche dilazione per g^ustare il suo Clericato da me allegato, al q^ue effetto fu spedita supplica in Arredo; ma giudicando essereno la b^eta di N. S. il non differire di offension della vendita gia deponata, hebbe per bene con Chirografo particolare degnare de q^ui Privilegio Clericale, che gli foris puote competere, et altre minorita' r^espetto al franc^e di L'acqua uno de' Complici; si che hoggi e' stato eseguito la vendita contro tutti cinque, et la ista d^egnatione nel genere della vendita, hauendo il sig. Luido terminata la sua vita colta Resolutione; serueno di Cong^o Latione ai suoi Parenti, et Amici l'esser stato commiserato dal Reo gli Summi ni d' onore, et da i buoni, ancorche, confessando la sua debolezza non possa negare di seruirne un infinito Remunario, attribuendo il tutto al non hauere saputo rappresentar le sue valide Ragioni. Compresi il sig. Ildia q^uo fu m^oto auisato alia di lui Casa, et al tutti i suoi Amici con copie de' fedeli e desideroso della continuaz^one di suoi Comandi, mi offerui sempre
M. D. LXXXX

Roma ca. Feb. 9 1688.

Qui per me obli con
Erasmo A. ungher



M.^o G.^o et C.^o: sig: sig: mio ad P.^o 124

Martedì si propose la Negoziazione: caa e la forza. Dal Couer:
no risolve = Dilata et ad mentis = La mente era che si
aspettassero le giustificazioni dell'efficacia conseguita. Si
questa favorevole se fosse: pigliarono fatto l'Assenso
e rimessione a respirare: buoni amici, quando nel
M.^o Salva sera alle due D. 1000 meno proprio sottoscritto
se il Chirografo derogava all'efficacia quanto si adduceva
et alla minaccia di uno dell'force. Sottoscrive il Chirografo
si generale e la forza tal nuova, e con essa la certezza
della Giustitia che e seguita Eggi dopo il pranzo di
cinque e sei del giovane M.^o Guido con il taglio della Testa
e degli altri quattro forze con la forza. Non significa a
M.^o et: il mio dolore perche di q.^o ne nota essere la med.
quidam testimonio.

Le giustificazioni sarebbe state di inlecantato grandi:
ma non nel caso e perche' mio M.^o ha voluto capi
A. et de la propria. Del pice, mancandogli solo una proposta
che due mio' fatti che mi sara' capitata accio' M.^o C.^o:
habbia l'istina positiva.
Tova che il M.^o C.^o del Conte e' sbigato dagli interessi
potrebbe venire M.^o C.^o: si nella Cad Maximoniell

di nell'anno del qual non si cominciarono le
"le Vite" - L'annata, per la quale si
"inseparati comandi" ecc. per la quale
di "le" Anno 1690

1690. The
Cant. of the

Al Signor ...
di ...

[Handwritten signature]

Al Signor ...
di ...

Fiorino ...



Romana.

Illustriss. & Reu^{me}. Dñe. **I**N contētione acerri-
mè, & eruditissimè habita inter DD. Pauperum Defenso-
res, & Fiscum in Cauſa Homicidiorum per conductos ho-
mines patratorum à D. Guidone Francifchino in perso-
nam Francifcæ Pompiliæ eius Vxoris, & Petri, ac Vio-
lantis Coniugum de Comparinis, renui in arenam descen-
dere, ne à proprio, quod cum eisdem DD. Defensoribus
ago, munere declinare viderer; Deditque moras, ac tem-
pus indulſit tacita etiam miſeratio, nimis enim præiudi-
care credebam eisdem Guidoni, & Socijs pro tali Reatu
carceratis, ad quorum excuſationem præcipuè ſe exhibe-
bat cauſa honoris, ſi tunc voluiſſem proſequi Defenſam
longè antea mihi commiſſam pudicitæ, & honeſtatis eiuf-
dem Francifcæ Pompiliæ, cuius teneram Coniugij men-
tem nulla vnquam impuræ libidinis aſperſit infamia, & cui
ſuſpicax Maritus nihil potuiſſet obijcere, niſi Vxorcidium
fuiſſet ſequutum, quaſi ex hoc ſolùm Adulterium volue-
rit probare, quod Vxorem potuerit occidere, & occide-
rit, vt crederetur Adultera.

Modò autem, quo, reſpectu Carceratorum omnium, Cauſa
remansit funeſtiſſimè terminata (ſic enim deſinunt, quæ
incipere non debuiffent) reaſſumendo infeliciffimæ quæ-
ſtionis pugnam tutiſſimè aſſero, quod ex latè deductis in
mea Inſormatione ſuper excluſione aſſerti Raptus ex gra-
tia reaſſumenda; Et ex latiùs cumulatis per Illuſtriſſimum
D. meum Fiſci Aduocatum in ſuis doctiſſimis allegationi-
bus in vtraque Cauſæ propoſitione diſtributis, abſoluen-
dam omninò eſſe memoriam prædictæ Francifcæ Pompi-
liæ à ſibi iniuſtè, & nimis animoſè per Virum impièto
Adulterij crimine, & per definitiuam Sententiam decla-
randum ipſam Maritale fœdus non violafſe; Abſque eo,
quod incongrua videatur talis Inſtantia, nam quamuis per
mortem omnia delicta ceſſent, vt per *Text. in l. Deſuncto*,
vbi *Gloſs. & D. D. ff. de public. delict.* & in *l. Senatusconſul-
tus, §. Si propter; ff. ad Tertullian.* & in *cap. Quorumdam*,
diſtinct. 22. tradunt *Eugen. conſ. 21. num. 2.*, D. Canonicus

A

Rai-

Rainald.in syntax.ver.criminal.tom.1.cap.2.§.1.numer.75. vers. Et quando reus, & tom.2.cap.23.§.1.2.& 3.num.234. Carpzou.in prax.criminal.tom.3.quæst.141.num.1. Nihilominus quando delictum est atrox, & eius naturæ, vt indelebilem infamiæ notam secum trahat, eius memoria semper durat, ac propterea interest D. Principali ipsius Auctricis famam ab asserto Adulterij crimine vindicare, vt optimè tradunt Eugen.conf.21.num.5.circa med. Peregrin. de iur.Fisc.lib.4.tit.5 num.35. ibi: Decimus tertius casus est, cum Hæredes defuncti ad purgandum infamiam, quæ publicè contra defunctum laborat de aliquo crimine, volunt, ad tuendam illius innocentiam, quod de crimine ipso cognoscatur, nam id fieri iure conceditur; Boss. tract. criminal.tit.de pænis, num.34.prope fin. ibi: Et nota omninò, quod etsi mors tollat pænam, tamen potest Hæres defuncti pro fama, & honore eius instare, vt declaretur super eo crimine; Caball.resolut.criminal.caf.298.num.30.ibi: Quod licet mortuo delinquente sit extinctum crimen quoad personam ipsius, tamen Hæredes Rei pro eorum interesse, & purganda infamia defuncti, possunt petere, quod procedatur ad Sententiam, & declaretur defunctum non commisisse delictum; idemque firmat in num.segg.

Et quidem non sine manifesta ratione, nam sicuti Fisco permittitur procedi ad vltiora in cognitione delicti in vita defuncti perpetrati, vsque ad illius memoriam damnandam, vt ex *Text.in l.6.C.ad l.luliam Maieft. & in l.final. ff.eod.& in §.3.institut.de public. iudic.* aduertunt Eugen. citat.conf.21.per tot.*D.Canonicus Raynald.dicit.cap.2. §.1. vers. Et quod dictus Reus, & vers. Et hoc in casu*; Ita pariter denegari non potest D. Principali, tamquam Hæredi beneficiato, & Successori eiusdem Pompilix, & Petri Comparini, quin, dum de illius innocentia constat, instet pro Sententia absolutoria reportanda, cum aliàs quilibet admitti possit ad defunctum defendendum, vt monet *Glof. in cap.Damnationis 24.quæst.2.& l.Seruum quoque, ff.de procur.Penia ad Emericum in direct. Sac. Inquisit. part. 3. comment. 92.vers. Hæc accusatio, & vers. Ne quis autem, Decian.tractat.crimin.tom.1.lib.5.cap.57.num.10. D.Canonicus Raynald.citat.cap.2.§.1.num.75. vers. Et hoc in casu, circa med.*

Nec ad huiusmodi Sententiam retardandam iterum allegari meretur fuga per dictam Pompiliam capta in societate D. Canonici Caponfacchi, cum quo in Hospitio Castrum Noui Carceribus mancipata fuit; ultra quod enim pro ea remouenda sufficeret allegare Iudicatum huius Illustriss. Congregationis emanatum sub die 18. mensis Februarij proximè præteriti aduersus Guidonem Franceschinum, per quod fuit publicè morti traditus sub die 22. subsequenti, non obstante, quod ad pœnam Vxoricij euadendam vnice insisteret super asserto Adulterio, quod ex prædicta fuga ab eius domo resultare prætendebatur, cessat quæcumque inhonestatis suspicio ex defensionibus tunc factis, & ex ipso Processu de iustissima causa apparet, propter quam miserima Vxor huiusmodi fugam à domo Viri arripere conata fuit, non quidem ex causa explendæ libidinis cum asserto Amasio, sed vt ad proprios lares remearet, ibique, & apud Parentes tutam, & honestam vitam viueret; Quam sanè causam optimè præferunt, nedum notissima iurgia statim ex orta post accessum ad Ciuitatem Aretinam vnà cum Petro, & Violante de Comparinis in exequutionem conventionis in capitulis Matrimonialibus insertæ. propter angustiam rei familiaris, itaut coacti fuerint post paucos menses Urbem repetere, non sine maximo mœrore ob deceptionem detectam, vt constat ex epistolis Abbatis Pauli Franceschini, querimonias ex dicta deceptione resultantes præsupponentibus, & signanter ex illa scripta 6. Martij 1694. ibi: *Torno à scriuere à V. S. che non voglio imitarlo nel modo di scriuere, non essendo da par suo seminar certe parole nelle lettere, che meriterebbero risposte di fatti, e non di parole, e queste sono offensiue à segno, che le conseruo per suo rimprovero, e sua mortificatione, & infra, ibi: Che se lei ci darà de' guai (che non credo mai) non ne resterebbe esente, nè pur lei;* & ex alijs epistolis recensitis in præterita Informatione, & signanter §. *Videns igitur, cum sequen.* quæ licèt qualitatem altercationis non ostendat, attamen dum D. Abbas Paulus non exhibuit litteras eidem scriptas, maxime contra eundem vrget præsumptio, querimonias fuisse iustas, & causam, ob quam conquerebatur, & altercabantur, fuisse veram, vt in proximis terminis firmavit *Rot.*

in Romana, seu Neapolitana Liberationis à Molestijs
27. Februarij 1690. §. *Ed magis, coram Eminentiss. Ar-*
chiepiscopo Mediolanen. & in Romana Pecuniaria super
Exhibitione 21. Junij 1694. §. Clarius, coram R. P. D.
Muto.

Verùm etiam acerrima lis mota per Petrum Comparinum
super nullitate constitutionis Dotis, & probationis suppo-
sitionis partus factæ per Violantem Matrem, tam ad deci-
piendum Virum, quàm ad arcendos Creditores, qui de eo
tempore valde vrgebant, & cùm Dos comprehenderet
omnia bona, & integrum Comparini Patrimonium non
exigui valoris, inspecta qualitate personarum, mota per
Socrum controuersia super considerabili quantitate,
quæ, vt passim experientia docet, implacabilia odia, & gra-
uissimas inimicitias parere solet, vt tradunt *Grammat.*
conf. 46. num. 4. Crauett. conf. 75. num. 11. Soccin. Iunior
conf. 73. num. 14. vol. 2. Decian. tractat. crimin. lib. 3. cap. 25.
num. 56. Vermigliol. conf. 321. num. 5. Forinacc. quest. 49.
num. 2. Huiusmodi effectum in infelicem Vxorem peperit,
ita ut Coniugalis amor iamdiù præcedentibus altercatio-
nibus turbatus, penitus extinctus remanserit, ita, & tali-
ter, vt ipsa pluries in propriæ vitæ discrimine propter Vi-
ri seueritatem, aliquando contumelijs, & aliquando igneo
breuiori sclopulo eam persequentis, se constitutam viderit,
quæ sanè pericula sicuti dubitari nequit, quin sint aptis-
sima ad incutiendum metum in quemlibet constantem
Virum, vt monent *Alex. conf. 156. numer. 4. libr. 5. Cepoll.*
conf. 2. num. 5. Paris. conf. 60. num. 3. lib. 4. Mascard. de pro-
bat. lib. 2. conclus. 1051. num. 49. Menoch. de præsumpt. lib. 3.
præsumpt. 4. num. 8. Boer. decis. 100. num. 13. Rot. post se-
cund. vol. conf. Frinacci. decis. 260. num. 10. & 11. ita multò
magis id affirmandum venit in Francisca Pompilia puella
teneræ ætatis, omni prorsus auxilio destituta, extra pro-
prios lares, & absentibus Parentibus, vt tradunt *Menoch.*
conf. 1. num. 290. lib. 1. Crauett. conf. 114. num. 3. lib. 1. Cepol.
conf. 221. num. 4. & 8. Mogolon. de met. cap. 2. §. 6. vbi quod
solus visus armorum, licèt habens eis non vtatur, neque
ea euaginet, est iusta causa metus productiua, & §. 7. nu-
mer. 15. vbi Consanguineorum absentiam pro metu indu-
cendo considerat, *D. Canonicus Raynald. tom. 3. cap. 25. §. 4.*
num.

*Et tamen mulier
eiusis gravibus
paulò ante fugit*

num. 34., vbi quod sufficit videre signa, & actus manifestæ voluntatis, vel præparamenta.

Ac propterea concurrentibus tot releuantissimis circumstantijs, per quas Pompilia mota fuit maritale lectum deserere fugam arripiendo, prorsus exclusâ remanet quæcumque suspicio inhonestatis, & coniugalis violatæ fidei; Quoties enim habemus duas Causas, quarum altera est licita, & permessa, altera verò iniqua, & abominabilis, ea omninò venit amplectenda, per quam delictum penitus excludatur, vt per *Text. in cap. in penis de regul. Iur.* & in *l. interpretatione 42. ff. de penis* Monent *Bald. in l. 1. num. 10. Cod. de ser. fugit. Censal. in l. unica §. 1. num. 36. vers. quod si plures extiterint Causæ C. si quis imperatori Maled., Honned. conf. 105. num. 60. lib. 1. Crauett. consil. 8. num. 2. & cons. 319. num. 1. Andreol. contr. 66. num. 24. Mascard. de probat. concl. 814. num. 8. vol. 2. Conciol. allegat. 87. numer. 24. Rota Januen. voto 11. num. 5., & 6. post. censal. in d. l. unic.*

Abquè eo, quòd talis licita Causa exclusâ remaneat tam ex Epistola per Franciscam Pompiliam Abbati Paulo scripta, in qua grates eidem rependendo, quòd eam Matrimonio coniunxerit cùm eius fratre, genitores insimulabatur, quòd eidem pessima Consilia insinuarent totam domum perdendi, & Urbem cùm Amasio repetendi, quòdquè per eorum discessum tranquillam, quietamque vitam ducebat; Quàm etiam ex societate Domini Canonici Iosephi Caponfacchi, cùm quo fugam arripuit, propter quam fuit ipsè in Ciuitate Vetula per triennium Relegatus.

Nàm quoad assertam Epistolam quicquid sit, an subsistat, & verisimilis existimanda sit, qualitas per eandem Pompiliam in suis constitutis adiecta, quòd scilicet Maritus designauerit elementa, eaque super inducto calamo fuerint atramento notata, ex quo ipsa scribere nesciebat; Certum est, quòd si ea attentè legatur, impossibile omninò erit asserere, ipsam æquo animo fuisse conscriptam; Quis enim filialis amoris, & obseruantia erga parentes adedò immemor inueniri potest, vt sibi metipsi persuadeat teneram puellam tunc temporis decimum quartum ætatis annum non excedentem vt ex fide Baptismi data in *Summ. Filci* secundæ propositionis

*qui negauerunt
se esse tales*

tionis *Causæ num. 2.*, & extrà proprios lares ex proximo discessu Genitorum adhuc mærentem, ac in Domo viri pessimè habitam, vt præferre videntur continuè querimoniæ, & recursus nedum ad Reuerendiss. Episcopum, sed etiam ad Dominum Commissarium facti, potuisse contra Genitores detestabilia crimina impingere, ac de eis Mariti fratrem sibi infensissimum certiorè facere, nisi, vt ipsamet ingenuè fassa fuit in suis constitutis, coacta fuisset à virò, cui propter nimiam ipsius sæuitiam sapissimè præcedenter expertam absquè evidentissimo mortis periculo reluctantè, minimè poterat, quæ sanè inuerisimilitudo sicuti est apta, legentibus horrorem incutere, ita pariter optimè ostendit epistolam non voluntariè, sed coactè scriptam fuisse, vt aduertunt *Farinac. conf. 22. numer. 34. ante med. lib. 1. & conf. 60. num. 31. in fine, Cabal. resolut. crim. cas. 199. numer. 36.* vbi quodd non est admittendum quodd nemo sanus probaret *Vermigl. conf. 3. num. 6. & 7.*; Quinimò ista nimia cautela extorquendi dictam Epistolam ab vxore, euidenter arguit in ipso dolum, eandemque affectate procuratam fuisse, vt sedaret animum eiusdem Abbatis Fratris, qui assiduis laceffitibus quærimonijs ob mala tractamenta erga vxorem, quotidie de iisdem redarguere non cessabat d. Guidonem, vt infimilibus terminis aduertit *Cassan. ad Consuet. Burgund. fol. mihi 2. num. 13.*

Quo verò ad Societatem D. Canonici Caponsacchi, ea pariter non videtur apta ad inhonestatis maculam constituendam; Cùm enim infelicissima mulier esset prorsus omni mundano auxilio destituta, frustra què auctoritatem Reuerendiss. Episcopi, ac Domini Commissarij ad se à vitæ discrimine liberandam implorauerit, propriæque ætati, ac sexui non conueniret, vt sola, vel in societate alicuius vilis Mulierculæ fugam arriperet incautè se grauoribus periculis exponendo, prout contingere potuisset, si per viam sola deprehensa fuisset, itaut de ea dici posset.

Incidit in Scillam cupiens euitare Charybdim.

Mirum propterea esse non debet, si D. Canonicum præd. in Comitum assumpsit, qui adhuc effectum sibi propositus fuit tam à D. Canonico de Comitibus, quàm à Domino Gregorio Guillichino Marito Pompiliæ affinitate coniunctis, quos

quos incredibile omninò est tali fugæ consensisse, si non agnouissent illam omninò necessariam ad euadendum mortis periculum, quod imminere infelicitissimæ mulieri erant optimè conscij, & si de honestate, & integritate comitis summoperè non fidissent; Ideoque vrgente tali necessitate prudens electio minoris mali, quamcumque prætenſæ inhonestatis umbram eliminat, vt tradunt *Bald. in leg. filium num. 1. ff. de his, qui sunt sui, vel alieni Iuris, & in l. 1. num. 35. C. de ijs, qui acc. non possunt, Menoch. de præsumpt. lib. 6. præsumpt. 54. num. 22. & 23. de arbitr. lib. 2. cas. 89 num. 23.*

Attento præsertim modo, quo fuga fuit executioni demandata, iter ad Urbem arripiendo recto tramite, & cum maxima celeritate, quod benè ostendit, vnicum motiuum fuisse vitam in tuto ponere, non etiam eam libidinosi oblectamenti deturpare; si enim hæc fuisset *Causa* principalis, profectò, vel non recto tramite Romam appulisset, vbi à Cognato, & Parentibus, statim depræhendi potuisset, sed in longinquiores *Regiones* se contulisset, vel non cum tanta celeritate, sed moram traxisset extrà publicam viam, & in loco, in quo, & per Maritum non potuisset inueniri, & propriam libidinem ad satietatem explere valuisset.

Quæ utique maxima inuerisimilitudo, optimè ostendit veritatem *Causæ* per Mulierem in suis constitutis adductæ, quod scilicet ad Urbem celeriter se contulerat, vt ibi penes proprios Parentes vitam, & honestatem in tuto collocaret, sicuti enim ex verisimili maximum oritur Indicium culpæ, ità pariter non minor ex inuerisimilitudine oriri debet innocentie præsumptio, vt monent *Farinac. conf. 22. num. 34. & de falsis quæst. 153. numer. 176. Caball. resol. crimin. Cas. 149. numer. 35. Vermigliol. conf. 31. numer. 5. & consil. 256. numer. 101. Conciol. resol. crim. 27. numer. 2.*

Idquè benè suadetur ex ingenua protestatione facta per Canonicum ipsimet Marito, in actu apprehensionis in hospitio Castri Noui illum de huiusmodi fuga obiurganti ibi — *Sono Galant'huomo, e quello che hò fatto l'hò fatto per leuare tua Moglie dal pericolo di morte* — vt deponit Iacobus quondam Simonis Testis Fiscalis Proc. fugæ fol. 50. exemplo adducto in mea allegatione super fuga, Scipionis scilicet

Affricani, qui cum à suis militibus fuisset capta pulcherri-
ma Iuuenis Vxor Allucij Principis Celtiberorum, illam ma-
rito restituendo dixit -- *fuit Sponsa tua apud me eadem, quae
apud Socros suos, parentesque suos, verecundia seruata est ti-
bi vt inuiolatum, & dignum me, tequè dari tibi donum pos-
set* -- vt testatur *Titus Lilius in suis Historijs lib. 26. fol.
mibi 493.*

Et licèt valdè difficile sit venustam mulierem in Societate Cu-
pidi Iuuenis itinerantem honestatis decorem seruare, id
tamen nequaquam est impossibile, vt præsèferre videntur
exempla relata *in eadem mea allegatione §. Quidquid dicat,*
quibus addo illud Penelopsis, de qua cecinit *Ouidius lib. 3.
elegiarum.*

Penelope mansit (quamvis Custode Careret)

Inter tam multos intemerata procos.

Præsertim cum Iter non fuerit voluntarium, prout neque So-
cietas D. Canonici, sed solum ad euadendum mortis peri-
culum, vnde concurrente huiusmodi necessitate, inappli-
cabilis prorsus redditur præsumptio, ex *Ouid. de Arte
amandi* deducta, quod,

A Iuene, & Cupido credatur reddita virgo.

Prout nec etiam ad petitam Sententiam retardandam, & in-
honestatis notam inducendam in Francisca Pompilia, quid-
quam ob stare videntur quamplures Epistolæ in latrina,
hospitij Castri Noui repertæ, quæ prætenduntur per ean-
dem conscriptæ D Canonico propter feruentissimum
Amorem, quo illum prosequeretur, subsistunt quippè ex-
ceptiones, & responsiones in præteritis Informationibus
adductæ; Prima scilicet, quod non fuerunt recognitæ, nec
probata fuit identitas caracteris, & adsit incertitudo,
cùm non constet, cui fuerint directæ, nec sit inuerisimile
quod fingi potuerint à marito, qui capturæ, & perqui-
sitioni semper adstitit, & qui forsàn sperabat ex eis faciliùs
resultare posse impictum Adulterij crimen, & super quo
summopere insistebat, vt optatam dotem, & lucrum super-
lucrari potuisset, itaut hæc sola possibilitas in contrarium
sufficiat ad elidendum Iudicium, quod prætenditur ex eis-
dem desumi *Rota coram Ludouis. decision. 352. numer. 2.
coram Manzaned. decision. 570. numer. 2. & sequen. & in
recent.*

recent. decisio. 64. numer. 25. part. 17. recent. Et secunda, quod licet tales exceptiones non subsisterent, adhuc ex eis inhonestatis, & violatæ coniugalis fidei deduci nequit argumentum; Quamvis enim ex litteris Amatorijs resultare valeat Adulterij inditium, illud tamen in casu nostro prorsus elisum remanet, dum cognoscitur eas tetendisse ad licitum finem, scilicet ad alliciendum Canonicum, ut sibi opem in fuga præstaret, & vitæ discrimen euitaret, tunc enim, sicuti permissus est finis, ita quoque permissa, & licita existimari debent media, quamvis suspicione non carentia, ea enim non per se sola, sed propter finem considerantur, ut aduertit *Gratian. discept. forens. cap. 580. numer. 8. Gob. consil. 119. numer. 72.* Quinimò nisi ex litteris amatorijs implicita fornicationis confessio resultet, non valet ex ipsis Adulterij præsumptio deduci, ut declarando Doctores contrariam sententiam tuentes monent *Sanchez. de matrim. lib. 10 tit. de Divort. disc. 12. quest. 3. numer. 48.*, eoque relato, *Moller. de Cornut. cap. 7 numer. 24.*

Validissima præsertim attentæ consideratione tum propriæ continentia, tum integritatis eiusdem Canonici, de quo multum fidebat, & sperabat, secum modestè in irinere se habiturum, dum ex eisdem Epistolis apparet, aliàs illius licentiam obiurgasse ibi -- *E mi meraviglio, che voi, che siete tanto casto, haucte composto, e copiate cose tanto poco honeste, & infra ibi -- mà io non vorrei, che voi faceste così in ogni cosa, come haucte fatto in questi libri, che il primo è stato honesto, e quest'ottave tutto il contrario, che voi da tant' honesto che siete, diuentaste tant' ardito, il che non credo --* Huiusmodi enim sincera obiurgatio, & tenor Epistolarum, in quibus nihil inhonestatis legitur, optimè ostendunt, atquè declarant animum Pompiliæ scribentis, ac propterea sicuti verba intelligenda sunt iuxta intentionem proferentis, ita à pari Epistolæ iuxta intentionem scribentis veniunt interpretandæ, ut per *Textum in cap. Intelligentia, & cap. Præterea de verbor signific.* tradunt *Oldrad. conf. 9. numer. 3. Surd. conf. 431. numer. 35. Molin. de Rit. Nupt. lib. 3. quest. 85. numer. 50.*

Vin-

Vindicata igitur honestate, & pudicitia Pompiliæ à fuga, & Epistolis, leuioris ponderis sunt alia prætenfæ inhonestatis indicia, quatenus deducantur ex accessu D. Canonici ad eius Domum ad effectum eam alloquendi, ex modo insidioso, quo fuga fuit preparata, & exequutioni demandata, mediante somnifero viro & domesticis propinato, mutua deosculatione in itinere, & ex Condormitione in hospitio Castrî noui, vltà enim Generalem responsionem, quodd de his omnibus nulla concludens affertur probatio, proût opus esset ad constituendam Pompiliam de Adulterio Ream, peculiaris vnicuiquè occurrit responsio.

Siquidem ingressus, & egressus de tempore nocturno in domum Franciscæ non resultat, nisi ex depositione vnus tantum Testis, scilicet Mariæ Margharitæ de contentis, quæ, cùm duas releuantissimas exceptiones patiat, nempè vnicitatis, & meretricij, eius dictum nullam infamiæ notam irrogare valet, vt respectu meretriciæ qualitatis tradunt *Marsil. conf. 102. num. 9.*, *Vermigliol. conf. 408. num. primo*, *Crot. de Testib. part. 3. numer. 46.* *Mascard. de probat. conclus. 1362. num. 20.*, & respectu vnicitatis, *Farinac. de Testib. quæst. 64. num. 28.*, & 33., *Vermigl. consil. 146. numer. 3.*, *D. Canonicus Raynaldus in syntax. rer. Criminal. tom. primo cap. primo §. 10. numer. 118.*, & cùm talis accessus tenderet ad vnicum finem conueniendi super fuga, & subtrahendi infelicem Mulierem à nimis proximo mortis periculo, non est ad malum finem præsumendus; Quoties enim constat de causa expressa, ad quam potest referri, eaque est omninò licita, illicita, & criminosa non venit tribuendum, vt ex *Textu in l. merito ff. pro socio* tradit in terminis *Crauet. conf. 205. n. 7.*, & 8.

Modus verò insidiosus, quo deuenit ad fugam dicta Francisca Pompilia, somniferum præparando, nedùm Viro, sed omnibus Domesticis, vltà quod non probatur, quatenus probaretur, potiùs sagacitatis, quàm inhonestatis præberet argumentum, cum nimis fatua fuisset Vxor, si fugam absque huiusmodi cautela tentasset.

Eodemque defectu probationis laborat asserta mutua deosculatio in itinere habita, cùm parum tuta sit illa, quæ resultare prætenditur ex vnus vilissimi Testis depositione;
Maximè

Maximè dum eius dictum nimis animosum detegitur; deponit quippè vidisse, dum Chisium ducebat velociter nocturno tempore, Franciscam Pompiliam, & Canonicum se mutuo deosculantes non reddita ratione, quod Luna luceret, vel quod adesset aliquod artificiale lumen tenebras depellens, quæ sanè circumstantia, quemadmodum est omninò necessaria in Teste de facto nocturno deponente, ita illius omisio omnem fidem illi adiicit, vt monent *Bursatt. consil. 34. numer. 6.*, *Vermigliol. consil. 74. numer. primo*, *Giurb. consil. Criminal. 37. numer. 41.*, *Farinacc. quæstion. 66. numer. 38.* *Polidor. Ripa in tractat. de noctur. tempor. cap. 57. numer. 7.*, *D. Canonicus Rainald. tom. primo cap. 11. §. 8. ad 13. numer. 8.* Addita vltèriùs maxima inuerisimilitudine, quod dum Chisium ducebat ea velocitate, vt potiùs volatum, quàm cursum imitaretur, potuerit retrò se voluendo mutuam deoscultationem intueri; Magisque augetur talis inuerisimilitudo ex eiusdem Testis dicto, dum deponit duxisse Franciscam Pompiliam, absque eo, quod cognosceret eam esse talem, nili postquam regrediens Aretium, obuiam habuit Guidonem Francischinum illius Maritum eandem insequentem, ac propterea si eam vidisset deosculari, profectò illicò recognouisset, cùm antea pluriès illam viderit, eaque sibi fuerit bene cognita; Ideoque asserendum omninò venit, quod vel tædio Carceris secreti affectus ad ita deponendum coactus fuerit, vel quod, vt verisimilius est, cùm ex velocissimo Chisij cursu contingere potuerit collisio sedentium in eo, crediderit casualem approximationem vtriusque Capitis, & Faciei, tetendisse ad malum finem basia captandi, vndè meritò præsumptio ex eius depositione resultans, fuit in Processu fugæ contempta, quæ aliàs si aliquam uerisimilitudinem inuolueret, in consideratione habitafuisset.

Tandem longè debilior est præsumptio in honestatis desumpta ex asserita condormitione in eodem Hospitio Castri Noui, cùm tam per Pompiliam, quàm per Canonicum fuerit in eorum constitutis constantissimè negata, solumque de ea deponit eiusdem Hospitij Cubicularius Testis vnicus, non quidem de certa scientia, sed præsumptiuè, ex quo illum

illum requisierint de Cubiculo cum vnico lectulo, & quia Dominus Canonicus ingenuè fatetur causam, propter quam vnicum lectum parare fecit, vt scilicet Francisca Pompilia, ob eius malam valetudinem, & præcipitosi itineris incommoditate, parum quiesceret, ipso ad ipsius custodiam vigilante, talis actus non debet trahi ad causam illicitam, vt in terminis monet *Crauet. citat. consil. 205. numer. 9.*, & *segg.*, vb. *numer. 15.*, ait, quod ad humaniorem partem semper est habenda interpretatio, quamuis rigorosa videatur, & si, vt prosequitur idem Auctor *numer. 20.*, & *21.* Non sufficeret ad plenam probationem Adulterij, quod quis repertus sit solus cum sola, & nudus cum nuda, & quod Iuuenis inueniatur in Cubiculo clauso cum Muliere dispectoratus, & Caligis solutis, quantò minùs talis præsumptio insurgere valet ex breuissima mora in eodem Cubiculo custodiæ causa.

Parum refragante, quod Francisca Pompilia in eius examine occultauerit huiusmodi moram, asserendo ad Hospitium peruenisse in Aurora, quoniam, cum ipsa esset optimè conscia de eius Viri credulitate, id forsitan asseruit ad prorsùs auertendam violatè fidei suspicionem, quæ certè oriri potuisset, si longiorem moram in Hospitio traxisse falsa fuisset; Vndè si talem moram non negasset, cum circumstantijs tamen seruata pudicitiam suadentibus, nullum præiudicium eidem attulisset confessio, ità paritèr nec mendacium præiudicare valet, vt tradunt *Marfil. consil. 15. numer. 15.*, *Bertazzol. consil. 59. numer. 7. lib. primo*, *Vermigl. conf. 45. numer. 20.*, & *conf. 273. num. 7.*, *Farinac. conf. 192. n. 11. ad med. vers. tùm etiam*, & *conf. 222. n. 14.*, & *quæst. 52. n. 14.*, & *segg.*

Cæterùm quamcumque prætensæ inhonestatis suspicionem prorsùs eliminat asseritio infelicissimæ Mulieris in Articulo mortis emissa, postquam plura læthalia vulnera per Virum inflicta fuere, quod nunquam coniugali fidei defecerat, vt optimè constat ex quamplurimis depositionibus Religiosorum Virorum, qui eidem in articulo mortis ministrabant, asserentium ipsam semper à Diuina Clementia exoptantem audiuisse, nè pro tali peccato venia concederetur, quæ vtique asseritio in articulo mortis emissa, omnem

nem fidem meretur, cùm nemo in eo statu constitutus, præsumatur adeò immemor Salutis æternæ, vt mentiri velit, vt tradunt *Natta consil. 537. numer. 18. lib. 3. Calder. conf. 15. tit. de vsur.*, *Menoch. de præsumption. lib. 5. præsumpt. 5. numer. 3.*, *Farinacc. quæst. 196. numer. 31.*, *Decian. tract. Crim. lib. 5. tit. de defens. Reor. cap. 37. n. 27. Card. de Luc. de Regal. disc. 119. numer. 24.*, & *de legat. discurs. 27. num. 10.*

Demùm nullum fundamentum ad redarguendam præfatæ Franciscæ Pompiliæ memoriam de inhonesta vita constitui potest super aserto decreto huius Illustrissimæ Congregationis, per quam condemnatus fuit Dominus Canonicus Caponsacchius in Triennem Relegationem in Ciuitate, Vetula, cum expressione deuiationis, ac cognitionis carnalis eiusdem Franciscæ Pompiliæ, vltra quamquod enim, vt admittit ipsemet Fiscus, me instante fuit demandata, licet non extensa illius moderatio per Dominos Iudices Illustrissimo Domino meo approbante, & ob id in mandato de ex-carcerando, subticendo dicta verba, fuerunt apposita alia : *Pro Causa, de qua in actis.*

Remouetur quæcumque difficultas ex sola ponderatione, quod tale decretum emanauit, nondùm assignatis defensionibus eidem Franciscæ Pompiliæ, eaque pœnitens inaudita, quæ de illo nullam minimam notitiam habuit, cum eidem non fuerit notificatum; Quinimò in decreto assignationis domus loco Carceris fuit tantùm expressa causâ relatiua ad acta; Vndè eidem obesse non poterat, tanquam emanatum contrà Tertium ipsa non citata ad *Textum in leg. de unoquoque.*, & *in leg. sepè ff. de re iudic.* firmavit *Rota coram Dunozett. Jun. decis. 797. numer. 4.*, & *in recent. decis. 392. numer. 5. part. 18. recentior.* Et in terminis quod sententia lata contrà Adulterum non noceat Adulteræ non citatæ, est *Text. in leg. denunciaſſe §. ultimo ff. ad leg. Iul. de Adulter. vers. si condemnatus,* ibi: *Si condemnatus fuerit, Mulier per eum non est condemnata, sed aget causam suam &c.* & tradit *Caroc. de exception. except. 97. numer. primo.* & *seq.*

Potissimum cum modò non agatur de absoluendo Marito ab vxoricidio, ac inducendo iustam causam à credulitate, inho-

Illustriss. & Reuerendiss. D.
GVBERNATORE
IN CRIMINALIBVS
S I V E

Excellentiss. Domino
VENTVRINO

Romana.

P R O

D. Hærede Beneficiato q. Franciscæ
Pompilia olim vxoris q. Guido-
nis Francischini.

C O N T R A

Fiscum, & litis Consortes.

Facti D. Procuratoris Charitatis.

Romæ, Typis Reu. Cam. Apost. 1698.

INSTRUMENTVM

SENTENTIÆ DEFINITIVÆ

Latae pro reintegratione famæ, & existimationis quondam Franciscæ Pompiliæ, olim Vxoris quondam Guidonis Franceschini de Arcetio; necnon absolutoriæ ad fauorem D. Dominici Tighetti vti hæredis beneficiati eiusdem Franciscæ Pompiliæ ab omnibus inquietationibus, molestationibus, vexationibus, & perturbationibus illatis, & inferri comminatis à Venerabili Monasterio S. Mariæ Magdalenæ Conuertitarum ad Cursum; vnà cùm Citationibus legitimè executis pro seruatione quatuor Terminorum ad docendum de appellatione, illiusque legitima prosecutione, vt eadem sententia transfret, prout transfijt, in iudicatum ob non interpositam appellationem.

IN DEI NOMINE. AMEN.



Nno Domini millesimo sexcentesimo, nonagesimo octauo, Indictione Sexta, Die verò nona mensis Septembris Pontificatus autem Sanctissimi in Christo Patris, & D. N. D. Innocentij Diuina Prouidentia Papæ Duodecimi anno eius octauo. Hæc est copia, siue transumptum infrascriptarum Citationum, & Sententiæ per acta mei factarum, & latæ respectiuè, tenoris sequentis, videlicet.

Illustrissimo, & Reuerendissimo D. Gubernatore
in Criminalibus.

Citentur infrascripti exaduerso principales, & aliàs omni &c. ad comparandum in Congregatione Criminali Die crastina, quæ erit 19. currentis hora solita Congregationis, necnon videndum reirerari omnes, & singulos terminos substantiales malè forsân, nulliter, & indebitè tentos, habitos, atque serua os in vim quarumcumque facultatum, absolui Instantem à censuris, quatenus &c. concludendum, concludique videndum in causa, &

audiendam sententiam definitiuam in forma ad p. d. instante
D. Dominico Tighetto Hærede Beneficiato quondam Franciscæ
Pompiliæ vxoris quondam Guidonis Francischini principali,
siue &c. Charitas Notarius.

Illustrissimus D. Franciscus de Gambis Fisci, & R. C. A. Procurator
Generalis.

D. Ioannes Maria Serbuccius Procurator, & Dominus litis effectus
q. Guidonis Francischini.

D. Franciscus de Paraccianis Procurator Venerabilis Monasterij S.
Mariæ Magdalenzæ Conuertitarum ad Cursum pro omni &c.

Exaduerso D. Procurat. Fiscalis Gen. & dixit non posse aliquã dari
sententiam nisi ad fauorem Fisci, & quatenus, &c. instat sibi
dari Dubium ad effectum &c., & interim non deueniri ad ali-
quam expeditionem causæ, nisi relata causâ in plena Congrega-
tione, & de voto Dominorum de illa, ac constituto aduersario
in carceribus, citatisque omnibus interessè habentibus alias &c.
hac die 18. Augusti 1698.

Franciscus de Gambis Fiscalis Generalis.

Feci personaliter contra Fiscum dicta die, & domi dimissa copia
contra alios 18. Augusti 1698. Balatresius.

Aloysius Pichius Substitutus Fiscalis Generalis.

Die decima nona Augusti 1698. Relatione facta comparuit D.
Antonius Lamparellus Procurator, & petijt; vt supra: ex tunc
per Illustr. & Excellentiss. D. Marcus Antonius Venturinus
I. V. D. Illustriss. & Reuerendiss. D. Almæ Urbis Gubernatoris
in Criminalibus Locumtenens sedens. &c. sententiauit,
prout in cedula, quam præ manibus accepit, vidit, legit, &
subscripsit, & ad publicandum mihi Notario tradidit, & con-
signauit tenoris &c. & ita &c. præsentibus DD. Antonio Bernardino
Piceno, & Antonio Toparino de Caprarola Testibus &c.
Pro D. Dominico Tighetto, nomine &c. contra Fiscum, & litis
confortes.

CHRISTI nomine Inuocato pro Tribunali sedentes, & solū Deum
præ oculis habentes per hanc nostram definitiuam sententiam,
quam de Iuris peritorum consilio ferimus in his scriptis in causa,
& causis, quæ coràm nobis in prima, sed alia veriori versæ fuerūt,
& vertūtur instantia inter D. Dominicum Tighettum vt haredē
beneficiatum quondam Franciscæ Pompiliæ vxoris quondam
Guidonis Franceschini de Aretio ex vna, & Fiscum, ac D. Ioan-
nem Mariam Serbuccium vt Procuratorem, & Dominum
litis effectum quondam eiusdem Guidonis Franceschini, nec-
non Ven. Monasterium Sanctæ Mariæ Magdalenzæ Conuertita-
rum ad Cursum pro omni suo iure, & interessè partibus ex alte-
ra, de, & super prætenso Adulterio commissio per dictam quon-
dam Franciscam Pompiliam cum D. Canonico Iosepho Maria
Caponfacchio, rebusq; alijs in actis causæ, & causarum huiusmodi

latius deductis &c. vigore decreti remissionis causæ facti ab Illustris. , & Reuerendis. D. Auditore SS. per acta Paschalisj, de quo in actis &c. relata causa in Congregatione , & de voto eiusdem dicimus, pronunciamus, declaramus, ac diffinitiuè sententiam ex nouiter deductis **NON CONSTARE DE DICTO PRÆTENSO ADVLTERIO**, & propterea memoriam eiusdem Franciscæ Pompiliæ **OMNINO** restituendam fore, & esse pristinae famæ, & existimationi, eundemque **D. Tighettum**, nomine, quo supra, ex hactenus deductis absoluendum, & liberandum fore, & esse ab omnibus, & singulis inquietationibus, & molestationibus, vexationibus, & perturbationibus harum occasione illatis, aut inferri comminatis, prout harum serie restituimus, & respectiuè absoluimus, & liberamus, vt supra, & pro restituta, & respectiuè absoluto, & liberato haberi volumus, & mandamus, & processum, seu processus quoscumq; desuper fabricatum, seu fabricatos esse abolendum, seu abolendos, prout abolemus, & cassamus, perpetuum silentium eidem Fisco, & litis consortibus imponendo; & ita Dicimus, pronunciamus, declaramus, ac diffinitiuè sententiamus, non solum &c. sed & omni &c.

Ita pronunciaui ego **Marcus Antonius Venturinus Locumtenens**.
Lata hac die 19. Augusti 1698. presentibus **DD. Antonio Bernardino Piceno, & Antonio Toparino de Caprarola Testibus &c.**

*Illustrissimo Urbis Governatore in Criminalibus, siue
Excellentissimo D. Venturino.*

Citentur infrascripti ad docendum de Appellatione, eiusque legitima prosecutione primo pro prima ad p. d. Instante **D. Dominico Tighetto** hærede beneficiato quondam **Franciscæ Pompiliæ**, olim vxoris qu. **Guidonis Francischini** principali, siue &c.
Charitas.

D. Ioannes Maria Serbuccius uti Procurator, & Dominus litis effectus dicti qu. **Guidonis Franceschini** exaduerso principalis.

D. Franciscus Paraccianus exaduerso Procurator Venerabilis Monasterij, & Monialium Sanctæ Mariæ Magdalena Conuertitarum ad Cursum pro omni &c.

Feci domi d. c. 31. Augusti 1698. **Molinellus.**

Die prima Septembris 1698. Relatione facta comparuit **R. D. Alexander Cassar** Procurator Substitutus Charitatis petijt, & obtinuit, vt supra.

*Illustrissimo Urbis Governatore in Criminalibus, siue
Excellentissimo D. Venturino.*

Citentur Infrascripti ad docendum de appellatione, eiusque legitima prosecutione, 2. pro 2. ad p. d. instante **D. Dominico Tighetto** Hærede Beneficiato quondam **Franciscæ Pompiliæ** olim vxoris quondam **Guidonis Franceschini** principali siue &c.

Charitas.

D I

D. Ioannes Maria Serbuccius vti Procurator, & Dominus litis effectus dicti quond. Guidonis Franceschini exaduerso principalis.

D. Franciscus Paraccianus exaduerso Procurat. Ven. Monasterij, & Monialium S. Mariæ Magdalena Conuertitarum ad Cursum, pro omni &c. Feci prima Septembris 1698. Molinellus.

Illustrissimo Urbis Governatore in Criminalibus, siue Excellentissimo D. Venturino.

Die tertia Septembris relatione facta comparuit R. D. Alexander Cassar Procurat. Substitut. Charitatis petijt, & obtinuit, vt sup. Citentur Infrascripti ad docendum de Appellatione, eiusque legitima prosecutione 3. pro 3. ad p.d. instante D. Dominico Tighetto Hærede Beneficiato quondam Franciscæ Pompiliæ, olim vxoris quondam Guidonis Franceschini principali, siue &c.

Charitas.

D. Ioannes Maria Serbuccius vti Procurator, ac Dominus litis effectus dicti quondam Guidonis Franceschini exaduerso principalis.

D. Franciscus Paraccianus exaduerso Procurator Venerab. Monasterij, & Monialium Sanctæ Mariæ Magdalena Conuertitarum ad Cursum pro omni &c.

Feci tertia Septembris 1698. Molinellus.

Die quarta Septembris 1698. Relatione facta comparuit R. D. Alexander Cassar Procurator substitutus Charitatis petijt, & obtinuit, vt supra.

Gubernatore in Criminalibus, siue Excellentissimo D. Venturino.

Citentur infrascripti ad docendum de Appellatione, eiusque legitima prosecutione 4. pro 4., & vltima dilatione, & decretum &c. ad p.d. Instante D. Dominico Tighetto hærede beneficiato quondam Franciscæ Pompiliæ olim vxoris quondam Guidonis Franceschini principali, siue &c.

Charitas.

D. Ioannes Maria Serbuccius vti Procurator, & D. litis effectus q. Guidonis Franceschini exaduerso principalis.

D. Franciscus Paraccianus vti Procurator Venerabilis Monasterij, & Monialium S. Mariæ Magdalena Conuertitarum ad Cursum pro omni &c. Feci 4. Septembris 1698. Balatresius.

Diè 5. Septembris 1698. Relatione facta comparuit R. D. Alexander Cassar Procurator Substitutus Charitatis petijt, & obtinuit, vt supra.

Quam quidem Copiam ego Dominicus Barloccius Curia Causarum Criminalium Tribunalis Illustriss., & Reuerendiss. D. Almae Urbis Gubernatoris pro Charitate Notarius, licet per alium mihi fidum ex suis proprijs originalibus extractâ, cum quibus facta collatione concordare inueni salua semper &c. in fidem præmissorum subscripsi, & publicauimus requisitus.

Loco ✕ signi prædicti Notarij.

The life in me abolished the death of things,
Deep calling unto deep: as then and there
Acted itself over again once more
The tragic piece.

* * *
our human speech is naught,
Our human testimony false,
* * *

it is the glory and the good of Art,
That Art remains the one way possible
* * *

Of speaking truth,
But Art,—wherein man nowise speaks to men,
Only to mankind,—Art may tell a truth
Obliquely, do the thing shall breed the thought,
* * *

So may you paint your picture, twice show truth,
Beyond mere imagery on the wall,
* * *

So write a book shall mean beyond the facts,
Suffice the eye and save the soul beside.

TRANSLATION



[i]

A Setting-forth²
of the entire Criminal Cause
against
GUIDO FRANCESCHINI, Nobleman of Arezzo,
and his Bravoes,
who were put to death in Rome,
February 22, 1698,

The first by beheading, the other four by the gallows.

ROMAN MURDER-CASE

In which it is disputed whether and when a Husband may
kill his Adulterous Wife without incurring
the ordinary penalty.

TRANSLATOR'S NOTE

The foregoing reproduction of the Old Yellow Book will suffice for those readers of Browning who are conversant with Italian and Latin. It has seemed well, however, to provide a translation for the rest of his public. The work of translation has been conditioned and guided by the nature of the original volume. Much of it consists of legal argumentation. Its technicality, its unusual type of professional logic, its shrewd sophistries can not be made pleasant reading. Its very terminology is without counterpart in literary English, and at times even in the phrase of the English and American lawcourts. These terms have usually been anglicized (Browning's own practice in such cases) rather than translated. The scope of the present volume does not admit of their explanation for the lay reader. The sophistries of the lawyers are couched in an intricate and elaborate style, and their periods of argumentation have necessarily been broken up before they could be reduced to intelligible English idiom. Professional mannerisms in the introduction of new points of law and of argument, or in the citation of authorities, have been rendered freely. The citations themselves are untranslatable and are therefore omitted. Frequent typographical errors have been corrected in translation only, which will sufficiently indicate the editor's emendations. The punctuation of the original is so bad that it has frequently been ignored. The problem of translation has been rendered the more difficult by the barbarity of the syntax, idiom and diction of the original. Certain Italian colloquialisms are shrouded in obscurity. The love letters, owing to their fragmentariness and studied innuendo, are at times unintelligible. Under these limitations, arising from the nature of the Book, the translator has endeavored to give a faithful but not a servile translation.

C. W. H.

Bracketed, heavy-faced Roman numerals [xiii] indicate the page numberings of the original book in the photo-reproduction. The bracketed word [Citations] is used to indicate the omitted citations referred to above. Brackets elsewhere indicate additions made to the original text for the sake of clearness.

The superior figures interspersed through the text refer to the appropriate notes in the corpus of detailed annotation.

- Sentence of the Criminal Court of Florence in the criminal case against Gregorio Guillichini, Francesca Pompilia Comparini, wife of Guido Franceschini, etc. December, 1697. [v]
- Argument in defense of the said Franceschini, of the Honorable Signor Giacinto Arcangeli, Procurator of the Poor in Rome, made before the Congregation of Monsignor the Governor. [ix]
- Argument of the Honorable Signor Advocate Desiderio Spreti, Advocate of the Poor, in defense of said Franceschini and his associates. [xxv]
- Argument of the above said Signor Arcangeli in defense of Biagio Agostinelli and his companions in crime. [xli]
- Summary of fact made in behalf of the Fisc. [xlx]
- Argument of Signor Francesco Gambi, Procurator of the Fisc and of the Reverend Apostolic Chamber, against the abovesaid Franceschini and his companions in crime. [lxi]
- Argument of Signor Giovanni Battista Bottini, Advocate of the Fisc and of the Reverend Apostolic Chamber, against the abovesaid. [lxix]
- Summary of fact in behalf of Franceschini and his associates in crime. [lxxxi]
- Another argument of the abovesaid Signor Arcangeli in favor and defense of the abovesaid. [ci]
- Another argument of Signor Advocate Spreti in favor of the above. [cxxv]
- An account of the facts and grounds, made and given by an Anonymous Author. [cxli]
- [iv] Another summary made on behalf of the Fisc. [clv]
- Argument of Signor Gambi, Procurator of the Fisc, against the abovesaid Franceschini and his companions. [clix]
- Another argument of the Signor Giovanni Battista Bottini, Advocate of the Fisc. [clxiii]
- Another argument of the abovesaid against the said defendants. [cxcv]
- A response to the abovesaid account of fact as given by the Anonymous Author. [ccvii]
- The sentence of Signor Maria Antonio Venturini, Judge in criminal causes, which declares that the said adultery was not proved, and which restores to her original fame the memory of Francesca Pompilia Comparini, wife of Guido Franceschini. [cclix]
- Argument of Signor Antonio Lamparelli, Procurator of the Poor in the said case. [ccxliii]
- Letter written by the Honorable Signor Giacinto Arcangeli, Procurator of the Poor, to Monsignore Francesco Cencini in Florence, in which he tells him that the sentence of death had been executed in Rome against the Guilty on February 22, 1698—that is, that Franceschini had been beheaded, and the other four hanged. [ccxxxv]
- Two other letters, one written by Signor Gaspero del Torto and the other by Signor Carlo Antonio Ugolinucci to the aforesaid Monsignore Francesco Cencini. [ccxxxvii-ix]
- Argument of Signor Advocate Spreti in favor of Franceschini, etc. [ccxxvii]

Attestation by me undersigned how, in the order of the affairs of the Governors, which are set before His Serene Highness, in the Chancery of the Illustrious Signori Auditori of the Criminal Court of Florence, there appears among other affairs of business, under decision 3549, the following of tenor as written below, that is

Arezzo against

1. Gregorio, son of Francesco Guillichini,²⁹⁵ not described.
2. Francesca Pompilia Comparini, wife of Guido Franceschini,²⁹⁴ and
3. Francesco, son of Giovanni Borsi called Venerino,²⁹⁵ servant of Agosto, Host at the "Canale."

because the second Accused, against her honor and conjugal faith, had given herself up to dishonest amours with the Canon Giuseppe Caponsacchi and with the first Accused, who instructed her, as you may well believe, to part from the aforesaid City of Arezzo, the evening of April 28,¹⁸⁴ 1697. And, that they might not be discovered and hindered, the second Accused put a sleeping-potion and opium¹⁹⁶ in her husband's wine at dinner. At about one o'clock¹⁸⁷ the same night, the said Canon Caponsacchi and the first Accused conducted the aforesaid second Accused away from the home of her husband. As the gates of the city were closed¹⁸⁹ they climbed¹⁹⁰ the wall on the hill of the Torrione; and having reached the "Horse" Inn¹⁹¹ outside of the gate San Clemente, they were there awaited by the third Accused with a two-horse carriage.¹⁹² When Canon Caponsacchi and the second Accused had entered into the said carriage, the word was given by him, the aforesaid first Accused, and they set out then upon [vi] the way toward Perugia,¹⁹³ the said third Accused driving the carriage as far as Camoscia. And while they were traveling along the road they kissed²⁰⁰ one another before the very face of the third Accused.

Still further, the second Accused, along with the first Accused and Canon Caponsacchi, carried away furtively²⁰¹ from the house of the said Guido, her husband, from a chest²⁰⁰ locked with a key, which she took from her husband's trousers [the following articles]: About 200 scudi in gold and silver coin; an oriental pearl necklace worth about 200 scudi; a pair of diamond pendants worth 84 scudi; a solitaire diamond ring worth 40 scudi; two pearls with their pins, to be used as pendants, 6 scudi; a gold ring with turquoise setting worth 2 scudi; a gold ring set with ruby worth 36 scudi; an amber necklace worth 5

scudi; a necklace of garnets alternated with little beads of fine brass worth 6 scudi; a pair of earrings in the shape of a little ship of gold with a pearl worth 16 scudi; two necklaces of various common stones worth 4 scudi; a coronet of carnelians with five settings and with a cameo in silver filigree worth 12 scudi; a damask suit with its mantle, and a petticoat of a poppy color, embroidered with various flowers, worth 40 scudi; a light-blue petticoat, flowered with white, worth 8 scudi; two vests to place under the mantle worth 2 scudi; a pair of sleeves of point lace worth 20 scudi; another pair of sleeves fringed with lace worth 5 scudi; a collar worth 4 scudi; a scarf of black taffeta for the shoulder with a bow of ribbon worth 8 scudi; an embroidered silk cuff worth 14 scudi; two [vii] aprons of key-bit pattern with their lace worth 12 scudi; a pair of scarlet silk boots worth 14 scudi; a pair of woolen stockings, a pair of white linen hose, and a pair of light-blue hose, worth 5 scudi; a snuff-colored, worsted bodice with petticoat, ornamented with white and red pawns, worth 3 scudi; a blue and white coat of yarn and linen, adorned with scarlet and other colored ornaments, worth 10 scudi; a worsted petticoat of light-blue and orange color, striped lengthwise, with yellow lines and with various colors at the feet, worth 14 scudi; an embroidered petticoat worth 9 scudi; a silk cuff worth 5 scudi; four linen smocks for women worth 14 scudi; a pair of shoes with silver buckles worth 8 scudi; many tassels and tapes of various sorts worth 14 scudi; six fine napkins worth 7 scudi; a collar of crumpled silk worth 7 scudi; two pairs of gloves of a value of 4 scudi; four handkerchiefs worth 5 scudi; a little silver snuff-box with the arms of the Franceschini house upon it worth 16 scudi; a coat of her husband Guido, rubbed and rent by the lock of a chest where he kept part of the aforesaid clothing. And they had converted the whole to their own uses against the will of the same, the first Accused and Canon Capon-sacchi having scaled the walls¹⁹⁰ of the city in company with the second Accused, as soon as she had committed adultery with them. And the said third Accused had given opportunity for flight to the said second Accused along with the Canon, in the manner told.

Therefore the Commissioner²²⁶ of Arezzo was of opinion to condemn arbitrarily the first Accused to five years' confinement²⁹⁵ at Portoferrio with the penalty of the galleys for the same length of time, not counting the reservation of fifteen days to appear and clear himself; to condemn the second Accused to the penalty of the Stinche²⁹⁴ for life and to the restitution of what was taken away, with the abovesaid reservation; and that the third Accused be not prosecuted further and be liberated from prison [viii]. But the Criminal Court was of opinion that the first Accused should be condemned to the

galleys during the pleasure of His Serene Highness, with the said reservation. As to the second Accused, who was imprisoned here in Rome, in a sacred place, it suspended the execution. And for the third, who had done no voluntary evil, it gave up further inquiry.²⁰⁸

Again proposed in the said business before His Serene and Blessed Highness with the signature of December 24, 1697.²⁰⁸

The opinion of the Court stands approved.

In sign of which

I, JOSEPH VESINIUS, J. V. D., an official
in the criminal court of Florence,
etc., in faith whereto, etc.

[ix] **Romana Homicidiorum.**³⁰⁶

[Pamphlet 1.]

Most Illustrious and Most Reverend Lord Governor :

Count Guido Franceschini, born of a noble race, had married, under ill⁴⁵⁸ omen, Francesca Pompilia, whom Pietro and Violante had asserted (even to one occupying a very high office) to be their own daughter. After a little while, she was taken to Arezzo, the country of her husband, along with her foster-parents,⁹⁴ and was restrained from leading her life with utter freedom.⁵¹⁵ Yet she has made pretense that she was hated on the pretext of sterility, as is clearly shown in her deposition during her prosecution for flight from her husband's home. [Cf. p. lxxxv.] Both she and her parents took it ill that they were denied their old free life, and they urged their daughter to make complaint before the Most Reverend Bishop,¹³⁹ saying that she had been offered poison by her brother-in-law.⁵¹ At the departure of this couple, when they were about to return to the City, they most basely instigated her—yes, and even commanded her by her duty to obey them—that she should kill her husband, poison her brother-in-law and mother-in-law, and burn the house; and then with the aid of a lover to be chosen thereafter, she should put into effect her long-planned flight back to the City. (But all this should be done after their departure, lest they might seem to have given her evil counsel.) [Such facts] may be clearly deduced from one of the letters¹¹² presented as evidence in the same prosecution.

When these pseudo-parents had returned home,¹⁰⁰ they declared that Francesca was not born of themselves,¹⁰³ but had been conceived of an unknown father by a vile strumpet.¹⁰⁵ They then entered suit before A. C. Tommati²⁶² for the nullification of the dowry contract.²⁰⁰

Day by day the love of Pompilia for her husband kept decreasing while her affection for a certain priest was on the increase. This affair went so far that on an appointed night, while her husband was oppressed with sleep (and I wish I could say that she had no hand in this, and had not procured drugs¹⁹⁶ from outside), she began her flight from her husband's house toward Rome, nor was this flight without theft of money²⁰⁰ and the company of her lover. Her most wretched husband pursued them,²⁰² and she was imprisoned not far from the City. Then, when after a short time they were brought to trial, the lover was banished²⁷¹ to Civita Vecchia for adultery, and she herself was placed in safekeeping.²⁷⁶ But owing to her pregnancy²⁸³ she returned to the home of Pietro and Violante, where she gave birth to a child²⁹⁹ (and I wish I could say that it had not been conceived in adultery³⁰²). This

increased the shame and indignation of the husband, and the wrath, [x] which had long been stirred, grew strong, because his honor among upright men was lost and he was pointed out with the finger of scorn,²⁵⁷ especially in his own country, where a good reputation is much cherished by men who are well-born. Therefore his anger so impelled the luckless man to fury,³⁰⁶ and his indignation so drove him to desperation, that he preferred to die rather than to live ignominiously among honorable men. With gloomy mind, he rushed headlong to the City,³¹⁴ accompanied by four companions. On the second night³¹⁹ of the current³⁶⁵ month of January, under the show of giving a letter from the banished lover,³²¹ he pretended to approach the home of the Comparini. When at the name of Caponsacchi the door was opened, he cut the throats of Violante³²³ and Pietro, and stabbed Francesca with so many wounds that she died after a few days.

While this desperation continued, his dull and unforeseeing mind suggested no way to find a place of safety.³³⁴ But accompanied by the same men, he set out for his own country along the public highway by the shortest route. Then, while he was resting upon a pallet³⁴¹ in a certain tavern,³⁴⁰ he was arrested together with his companions by the pursuing officers.

Great indeed is this crime, but very greatly to be pitied also, and most worthy of excuse. Even the most severe laws give indulgence and are very mild toward husbands who wipe out the stain of their infamy with the blood of their adulterous wives. [Citations.]

This indeed was sanctioned in the laws of the Athenians and of Solon³⁷⁹ (that is, of the wisest of legislators), and what is more, even in the rude age of Romulus,³⁸¹ law 15, where we read:

“A man and his relatives may kill as they wish a wife convicted of adultery.” [Citations.]

I hold to begin with, that there can be no doubt of the adultery of the wife [for several reasons]. [First], her flight together with her lover during a long-continued journey. [Citations.]

[xi] [Second], the love letters²³² sent by each party; these can not be read in the prosecution for flight without nausea. [Citations.]

[Third], the clandestine entry¹⁷⁰ of the lover into her home at a suspicious time. [Citations.]

[Fourth], the kisses²⁰⁶ given during the flight (p. 100)⁵³² according to the following sentiment: “Sight, conversation, touch, afterwards kisses, and then the deed [adultery].”⁵³⁵ [Citations.]

[Fifth], their sleeping in the same room²¹⁵ at the inn. [Citations.]

[Sixth], the sentence of the judge,²⁷¹ who condemned the lover for his criminal knowledge of her, which made this adultery notorious. [Citations.]

Furthermore⁴⁷³ we are not here arguing to prove adultery for the

purpose of demanding punishment [upon the adulteress], but to excuse her slayer, and for his defense; in this case, even lighter proofs would be abundant, as Matthæus advises. [Citations.]

These matters being held as proved, the opinion of certain authorities who assert that a husband is not excusable from the ordinary penalty, who kills his adulterous wife after an interval, does not stand in our way. For the aforesaid laws speak of the wife who has been found in her guilt and has been killed incontinently.⁴⁰⁵ Hence such indulgence ought not to be extended to wife-murder committed after an interval, because the reins should not be relaxed for men to sin and to declare the law for themselves. [Citations.]

[xii] Furthermore, Farinaccius does not affirm this conclusion, but shows that he is very much in doubt, where he says: "The matter is very doubtful with me, because injured honor and just anger—both of which always oppress the heart—are very strong grounds for the mitigation of the penalty." Matthæus well weighs these words on our very point. And both Farinaccius and Rainaldus conclude that the penalty can be moderated at the judgment of the Prince.

I humbly pray⁴⁵² that this be noted. The aforesaid laws, which seem to require discovery in the very act³⁴³ of sin, as some have thought, do not decide in that way merely for the purpose of excusing a husband moved to slaughter by a sudden impulse of wrath and by unadvised heat. But they so decide lest on any suspicion of adultery whatsoever, oftentimes entirely without foundation, men should rush upon and kill their wives, who are frequently innocent. Hence the "discovery in the very act of crime," which is required by law, is not to be interpreted, nor to be understood, as discovery in the very act of license, but is to be referred to the proof of the adultery, lest on trifling suspicion a wife should be given over to death. But when the adultery is not at all doubtful, there is no distinction between one killing immediately and killing after an interval, so far as the matter of escaping extreme punishment is concerned. [Citations.]

For whenever a wife is convicted of adultery, or is a manifest adulteress, she is always said to be "taken in crime." [Citations.]

And in very truth the reasons adduced by those holding the contrary opinion are entirely too weak. For murder committed for honor's sake is always said to be done immediately,⁴⁰⁵ whensoever it may be committed. Because injury to the honor always remains fixed before one's eyes, and by goading one with busy and incessant stings it urges and impels him to its reparation. [Citations.]

[xiii] Such relaxation of the reins to husbands, for taking into their own hands the law, would indeed be too great if the law of divorce were still valid. For in that case husbands would not be permitted to make such reparation of their honor. For another way would be

satisfactorily provided for them, namely, in their right to dismiss and to repudiate the polluted wife. In this way they could put far from themselves the cause of their disgrace, yes, and the very ignominy itself. But when by the divine favor our Gentile blindness was removed, and matrimony was acknowledged to be perpetual and indissoluble, those were indeed most worthy of pity who, when all other way of recovering their honor was closed to them, washed away their stains in the blood of their adulterous wives. Petrus Erodus [Citation], after he has discussed a matter of this kind according to the usual practice of Roman Law, adds in the end: "For as all hope of a second marriage is gone so long as the adulteress still lives, we judge that such very just anger is allayed with more difficulty, unless it be by the flight of time"; and therefore such a case, when not terminated by divorce, is usually terminated by murder. For as Augustine says, "what is not permitted, becomes as if it were permitted; that is, let the adulteress be killed, that the husband may be released."

I acknowledge that it is laudable to restrain the audacity of husbands, lest they declare the law for themselves in their own cause; since they may be mistaken. But it would be more laudable indeed to restrain the lust of wives; for if they would act modestly and would live honorably they would not force their husbands to this kind of crime, which I may almost call necessary. Nor can we deny that by the ignominy brought upon them by the adultery they are exasperated and are driven insane, and a most just sense of anger is excited in their hearts. For this grievance surpasses all others beyond comparison, and hence is worthy of the greater pity, according to the words of the satirist [Juv., x, 314]: "This wrath exacts more than any law concedes to wrath."

Papinian also well acknowledges this [Citation] where we read: "Since it is very difficult to restrain just anger." For these reasons, authorities hold that a just grievance should render the penalty more lenient even in premeditated crimes; because the sense of "just grievance does not easily quiet down, or lose its strength with the flight of time, but the heart is continually pierced by infamy, and the longer the insult endures, the longer endures the infamy, yea, and it is increased." [Citations.]

[xiv] And this drives one on the more intensely, because with greater impunity, as I may say, wives pollute their own matrimony and destroy the honor of their entire household. In ancient times,⁴⁰⁰ while the *Lex Julia* was in force, wives who polluted their marriage-bed underwent the death penalty. [Citations.]

Likewise it was so ordained in the Holy Scriptures; for adulterous wives were stoned to death, Gen. 38; Lev. 20: 10; Deut. 23: 22; Ez. 16.

The solace drawn from the public vengeance quieted the anger and destroyed the infamy. Then the husband, who was restored to his original freedom, could take a new and honest wife and raise his sons in honor. But now, in our evil days, there is a deplorable frequency of crime everywhere, as the rigor of the Sacred Law has become obsolete. And since wives who live basely are dealt with very mildly, the husband's condition would indeed be most unfortunate if either he must live perpetually in infamy, or must expiate her destruction, when she is slain, by the death penalty, as Matthæus well considers. [Citation.]

Therefore, when it is claimed that the husband shall escape entirely unpunished, it is necessary that the wife be killed in the very act of discovered sin. But when the question is as to whether or not a husband may be punished more mildly than usual when driven to wife-murder for honor's sake, it makes no difference whether he kill her immediately ⁴⁰⁵ or after an interval. [Citation.]

Nor does this opinion lack foundation in the very Civil Law of the Romans, for Martian [Citation] asserts that a father who had killed his son while out hunting, because he had polluted his stepmother with adultery, was exiled. Nor had the father found him in the very act of crime, but slew him while out hunting, that is with a pretense of friendliness and by dissimulating his injury. Accordingly he was punished, but not with the usual penalty; for he had killed his son, not in his right as a father, but in the manner of a robber. Hence we can infer that not the killing, but the method of killing was punishable, as we may deduce from Bartolus. [Citations.]

[xv] Still further,⁴⁰⁴ it is well worthy of consideration that one may kill an adversary with impunity, for the sake of his personal safety, but he must do so immediately and in the very act of aggression, and not after an interval. For the life of one slain may not be recovered by the slaying of the murderer. Accordingly, whatever violence may follow upon the first murder becomes vengeance, which is hateful and odious to the law; for the jurisdiction of the judge is insulted by depriving him of the power of publicly avenging murder. But if by the death of the slayer the one slain could be called back to life, I think there is no doubt that anyone could kill the said slayer; for then such an act would not be revenge, but due defense, leading toward the recovery of the life that had been lost. But even when we are dealing with an offense and injury which does not affect the person of the one injured, it is likewise permitted that one who has been robbed may, even after an interval, kill the thief for the recovery of the stolen goods, provided every other way to recover them is precluded. Likewise, one offended in his reputation should be permitted at all times to kill the one injuring him; for such an act may be termed, not the avenging of an injury, but the reestablishing of wounded honor, which could be healed in no other way. [Citations.]

Furthermore,⁴⁰⁴ as I have said, when one is discussing the subject of self-defense, he is dealing with an instantaneous act; hence the anger conceived therefrom ought to quiet down after a while, according to the warning of St. Paul,³⁸³ Eph. 4: "Let not the sun go down upon your wrath." But when we are dealing with an offense that injures the honor, this is not merely a momentary matter, but is protracted, and indeed with the lapse of time becomes the greater, as the injured one is vilified the more. Therefore, whensoever the murder follows, it is always said to have been committed immediately. [Citation.]

Relying upon these and other reasons, most authorities affirm that a husband killing his adulterous wife after an interval, but not found in licentiousness, is to be punished indeed, but more mildly and with a penalty out of the ordinary. [Citations.]

[xvi] Caballus testifies that this has been the practice in many of the world's tribunals. Calvin gives other cases so decided. [Citation.] And Cyriacus, who speaks in worse circumstances, adduces numerous other cases, and the authorities recently cited offer many more.

This lenient opinion is the more readily to be accepted because, as I claim, the deed about which we are arguing does not also carry with it (as the Fisc holds) attendant circumstances demanding such a rigorous penalty.

[First] the taking of helpers⁴⁰⁹ to be present at the murders [is not such a circumstance]; because he could lawfully use the help of companions to provide more safely for his own honor by the death of his wife. [Citations.]

[Secondly] the crime is not raised to a higher class because he led with him helpers at a price³¹⁶ agreed upon; for what is more, and is far more to be wondered at, a husband can lawfully demand of others the murder of an adulterous wife, even by means of money, as the following indisputably affirm. [Citations.]

[xvii] Likewise it does not at all disturb [our line of argument] that Count Guido might have killed his wife and the adulterer when they were caught in the very act of flight at the tavern of Castelnuovo, but that he preferred rather to have them imprisoned,²²² seeking their punishment by law, and not with his own hand. We deny that he could have safely killed both of them, inasmuch as he was alone, nor could he attack them, except at the risk of his own life. Because the lover was of powerful strength,²⁹ not at all timid, and all too prompt for resisting, since in the word of one of the witnesses in the prosecution for flight, he was called *Scapezzacollo* [cutthroat]. Nor is it credible that, unless he had been fearless and full of spirit, he would have ventured upon so great a crime, and would have dared to participate in her flight, and to accompany the fugitive wife from the home of her husband. And this fact is more clearly deducible from one of his letters

[cf. p. xcvi], in which, after urging Francesca to mingle an opiate in the wine-flasks for the purpose of putting her husband and the servants to sleep, he adds that if they find it out she should open the door; for he would either suffer death with her or would snatch her from their hands. These things indicate both courage and audacity. And though the wife is a woman, that is a timid and unwarlike creature, nevertheless Francesca was all too impudent and audacious, whether because of her hatred for her husband or on account of her anger at the imprisonment of her lover. For she drew a sword ²²⁷ upon her husband in the very presence of the officers who were about to arrest her. And to prevent her from going further, one of the bystanders had to snatch it from her hands. Therefore, ⁴⁰⁷ before their imprisonment, Guido could not put into effect what he had had in mind and what he could lawfully do, because he was alone and his strength was not sufficient. Then when she had been taken to prison, and afterwards was placed in safekeeping, it was impossible for him to vindicate his honor. But when at last she had left the monastery and had gone back to the home of Pietro and Violante, he took vengeance as soon as he could. Therefore we hold that he killed her in the very act, ³⁴³ as it were, and immediately. In Sanfelicius [Citation] we read of a case where a husband, though he could have killed his wife immediately, did not do so, but craftily redeemed himself from his disgrace by slaying his wife as soon as possible. And Giurba also speaks of a case where the argument is concerning an injury that was not personal, but real, as was said above.

Guido saw to her capture, ²²² and insisted that she be punished, lest she continue her adultery and viciousness, being powerless to do anything else, because his confusion of mind, his helpless fury, and his sense of shame led him unwisely into not taking the law into his own hands and recovering his lost honor. He indeed lodged complaint, but it was because [xviii] he could not kill her. Nor would his ignominy have been wiped out nor his infamy have been destroyed by her imprisonment and punishment. But when indeed after her imprisonment he was still more shut out from noble company, ²⁵⁷ his injury ever became the more acute, and it stimulated him the more strongly to regain his own reputation. But his bitterness of mind was increased especially at hearing that she had gone back to the home of Pietro and Violante, who had declared that she was not their daughter, but the child of a dishonest woman; ¹⁰⁶ hence his injury was increased by her staying in a home which he suspected, as is said a little further on. Accordingly the same cause kept urging him after her departure from the monastery, as had done so before her imprisonment and the appeals made by Count Guido.

It makes very little difference ⁵⁰² that Francesca was staying in the home of Violante, which had been assigned to her as a safe prison ²⁸⁴

with the consent of Guido's brother.²⁸⁸ For what would it amount to even if with the consent of Guido himself she had been taken from the monastery (yet we have no word of this matter in the trial). For Guido could ²⁹¹ make that pretense to gain the opportunity of killing her for the restoration of his honor. Nor would such dissimulation increase the crime, especially to the degree of the ordinary penalty, since it is certain that the husband may kill a wife stained with adultery, without incurring such penalty. Yet a heavier or lighter penalty is inflicted, just as more or less treachery accompanies the murder, as Matthæus testifies it was practiced in the Senate of Matritensis. [Citation.]

Nor is the attendant circumstance of the place ⁴¹⁹ assigned as a prison worthy of consideration, as if the custody of the Prince had been insulted; for one is not said to be in custody when he is merely detained in a place under security that he will not leave it. [Citation.] Furthermore, this objection ⁶⁰⁰ falls utterly to the ground, for the circumstance of such a place ⁴¹⁹ does not increase the crime, whenever it is committed by one having provocation or for the repelling of an injury. And Marta holds thus in the more serious case of a crime committed in prison. [Citations.]

Furthermore we do not believe, from what is said above, that the penalty can be increased because of the murder of⁴⁰¹ Pietro and Violante, since the same injured honor [xix], which impelled Count Guido to kill his wife, forced him to kill the said parents. And now may the ashes of the dead spare me if what I have urged above, and what I am about to say, may seem to disturb their peace! Neither the flame of hatred nor the impulse of anger (which are far from me) have suggested these charges; but the demands of the defense, which I have assumed without a penny of compensation,³⁷⁶ compel me to employ every means leading to the desired end.

I have said, and I think not without due reason, that the Accused sprang forward to the death of both of them, moved simply by an immediate injury to his own reputation. For a few months after the marriage contracted with Francesca, whom they had professed to be their daughter, they had not blushed to declare that she was not such. Hence there is an inevitable dilemma.²⁸⁹ Either [*first*] she was in deed and truth their daughter, and then we must acknowledge that in afterward denying her parentage they had inflicted the greatest injury upon the honor and reputation of the Accused; for they had conceived strong hatred and malice against him. Hence they did not hesitate to disgrace their own daughter, in order that they might bring upon him the infamy of having married the daughter of a vile and dishonest woman.¹⁰⁶ This is indeed a fact, that whoever knows Count Guido supposes he has married a girl, not merely of rank unequal to his own, but even of the basest condition, and this greatly injures the reputation of his entire household.

Or else [*second*] Francesca was indeed conceived of an unknown father and born of a dishonest harlot.¹⁰⁵ And it can not be denied that in that case he suffered even greater injury, which branded him with a mark of infamy; both because of her birth and from the fact that daughters are usually not unlike their mothers.¹⁰⁶ Cephalus [Citations] where we read: "From such mingling with harlots it is to be supposed that the people become degenerate, ignoble, and burning with lust." And would that experience had not taught us this fact!

The unfortunate man believed he was marrying the daughter of Pietro and Violante, born legitimately, and yet by the contrivance and trickery of this couple he married a girl of basest stock, conceived illegitimately by a dishonorable mother. From this fact alone the quality of those parents can be inferred, who,⁴⁹⁰ for the sake of deceiving those¹⁰⁷ lawfully entitled to the trust-moneys, had made most vile pretense of the birth of a child, [xx] entirely unmindful that they laid themselves liable to capital punishment. [Citations.]

It will not therefore be difficult to believe what Francesca reveals in her letter to her brother-in-law,¹¹² that the abovesaid couple, in spite of the fact that she was well treated, kept instigating her daily to poison her husband, her brother-in-law, and her mother-in-law, and to burn the home. And though these crimes are very base, they gave her still worse counsel, even by her obligation to obey them; namely, that after their departure from Arezzo, she should allure a lover and, leaving her husband's home in his company, should return to the City. In her obedience to their commands, this daughter seemed indeed all too prompt. Who then will deny that such reckless daring, wherefrom a notorious disgrace was inflicted upon the entire household of the Accused, ought to be attributed to the base persuasion of the said couple? Nor was it difficult to persuade that girl to do what she was prone to by inborn instinct and by the example of her mother.¹⁰⁶

It is not my duty to divine why that couple so anxiously desired the return of Francesca to their home. But I can not persuade myself that they were moved by mere charity, namely, that she might escape ill-treatment. For Francesca, in the said letter, acknowledges that she is leading a quiet life and that her husband and the servants are treating her very well, and that what she had laid before the Bishop had been the falsehood of the said couple.

I know furthermore that if a husband have knowledge of the adultery of his wife and keep her in his home, he can not escape the mark and penalty of a pimp. [Citations.] If therefore, as the said couple declare, Francesca was not their daughter, why did they receive her so tenderly into their home after her adultery was plainly manifest? Why did they, as I may say, cherish her in their breasts, not merely up till the birth of her child, but even till death? And I wish I could

say that her love affairs with the banished [priest] were not continued there! ²⁹³ For at his mere name, ³²¹ after the knocking at the door, as soon as they heard that some one was about to give them a letter from the one in banishment, [xxi] immediately the door was opened and Guido was given an entry for recovering his honor. If indeed the said couple had been displeased with the adultery of Francesca, they would, without doubt, have shuddered at the name of the adulterer, and would have cut off every way for mutual correspondence. Therefore it is most clearly evident that the cause of wounded honor in the Accused had continued, and indeed new causes of the same kind had arisen, all of which tended toward blackening his reputation.

Nor does it make any difference that the Accused may have had in mind several causes of hatred toward both Francesca and the Comparini. For if these are well weighed, they all coincide with and are reduced to the original cause, namely, that of wounded honor. However that may be, when causes are compatible with one another, the act that follows should always be attributed to the stronger and more urgent and more acute. [Citations.] And on the point that when several causes concur, murder is to be referred and attributed to injured honor, and not to the others. [Citations.]

Therefore I think that any wise man ought to acknowledge that Guido had most just cause for killing the said couple, and that very just anger had been excited against them. This was increased day by day by the perfectly human consideration that he would not have married her unless he had been deceived by that very tricky couple. And to what is said above we may add that either the child born [of Pompilia] was conceived in adultery, as the Accused could well believe, since he was ignorant of the fact that his wife was pregnant during her flight; and then we can not deny that new offense was given to his honor, or the old one was renewed, by the said birth; or the child was born of his legitimate father; and who will deny that by the hiding of the child, ³⁰⁹ Guido ought to be angered anew over the loss of his son? And the great indignation conceived from either cause (the force of which is very powerful) is so deserving of excuse that very many atrocious crimes committed upon the impulse of just anger have gone entirely unpunished. [Citations.] The following text [Citation] agrees with this, "Nevertheless, because night and just anger ameliorate his deed, he can be sent into exile." [Citations.]

[xxii] And not infrequently ⁴⁰¹ in the contingency of such a deed, men have escaped entirely unpunished, who, when moved by just anger, have laid hands even upon the innocent. For a certain Smyranean woman had killed her husband and her son conceived of him, because her husband had slain her own son by her first marriage. When she was accused before Dolabella, as Proconsul, he was unwilling either to

liberate one who was stained with two murders, or to condemn her, as she had been moved by just anger. He therefore sent her to the Areopagus, that assembly of very wise judges. There, when the cause had been made known, response was given that she and her accuser should come back after a hundred years. And so the defendant in a double murder, although she had also killed one who was innocent, escaped entirely unpunished. [Citation.]

Likewise ⁴⁹² a wife who had given command for the murder of her husband because of just anger from his denial of her matrimonial dues was punished with a fine, and a temporary residence in a monastery, as Cyriacus testifies. [Citation.] Such pleas might indeed hold good whenever the accused had confessed the crime, or had been lawfully convicted, neither of which can be affirmed [in our case]. But much more are they to be admitted, since he confesses ⁴⁹⁸ only that he gave order for striking his wife's face, or for mutilating it; and if those he commanded exceeded his order, he should not be held responsible for their excess. [Citations.]

His fellows and companions give his name and claim that he had a hand in the murders. And in spite of the fact that the Fisc claims they have hidden the truth in many respects, equity will not allow that certain matters be separated from their depositions and that these be accepted only in part; for if they are false in one matter, such are they to be considered in all. It would be more than enough to take away from those depositions all credence that, under torture in his presence, they did not purge that stain. [Citations.]

[xxiii] It has very justly been permitted that in defense of this noble man I should deduce these matters, as they say, with galloping pen. The scantiness of the time has not suffered me to bring together other grounds for my case; these could be gathered with little labor, and possibly not without utility. Yet I believe that all objections, which can be raised on the part of the Fisc, have been abundantly satisfied.

H. ARCANGELI, *Procurator of the Poor.*

[xxiv]

[File-title of Pamphlet 1.]

*By the Most Illustrious and Most Reverend
Lord Governor in Criminal Cases:*

Roman Murder-case.

*On behalf of Count Guido Franceschini, Prisoner,
against the Fisc.*

Memorial of fact and law.

At Rome, in the type of the Reverend Apostolic Chamber, 1698.

[xxv]

Romana Homicidiorum.

[Pamphlet 2.]

Most Illustrious and Most Reverend Lord Governor :

From the “ prosecution [for flight],” which was brought in this very tribunal,²⁷⁰ and by his honor, Lord Venturini, Judge in this present case, there is more than satisfactory proof of adultery committed by Francesca Pompilia, wife of Count Guido Franceschini, a nobleman of Arezzo, with the Canon Caponsacchi. With Caponsacchi the parents of this same Francesca Pompilia entered into conspiracy, although they were living here in the City. And after she had given an opiate¹⁹⁶ to Count Guido and his entire household, she fled that same night from the city of Arezzo toward Rome.

Consequently, the Canon, as may be remembered, was banished to Civita Vecchia, with a statement of his criminal knowledge of that woman in the said decree of condemnation.²⁷¹ This adultery is also evident from other matters of evidence deduced by the Procurator of the Poor. There remains, accordingly, no room to doubt it, but rather their adultery may be said to be notorious, here in the City, in the country of Count Guido, and throughout all Etruria.

Since this is established, we can safely assert that even if Guido had confessed that he slew his wife with the complicity and help of Blasio Agostinelli of the town of Popolo, Domenico Gambassini of Florence, Francesco Pasquini of the castle of Monte Acuto, and Alexandro Baldeschi of Tiferno, he should not therefore be punished with the ordinary death penalty, but more mildly. This is in accord with the decision of Emperor Pius as related by Ulpian [Citation] and by Martian. [Citation.] For in both of them it is said that a man of low birth is sent into perpetual exile, but that a noble is banished only for a limited time; but the crime of a husband who is moved by just anger is overlooked, as this same Ulpian confirms. [Citation.] Since it is most difficult to restrain such anger. [Citation.]

[xxvi] Yet we should not consider it necessary that the adultery of the wife be conclusively proved (as it really is) in order that there be room for mitigating the said penalty. For it would be enough, if we were dealing with a case of mere suspicion: Glossa, etc. “ A man who had killed his son because he believed the young man had lain with his stepmother, as was true, was deported to an island.” [Citations.]

Dondeus also speaks of a man who had boasted that he wished to ruin the sister of the one who killed him, which is said to have aroused just suspicion and fear for the loss of honor sufficient to free the slayer from the ordinary penalty of murder. [Citations.]

Nor is it true, as some authorities affirm, that the husband must take the wife in very adultery, and kill her immediately;⁴⁰⁵ in which case they say the abovesaid laws hold good, but that it is otherwise if the murder is done after an interval. [Citations.] [xxvii] For the contrary opinion is the truer, the more usual, and the one to be observed in practice, as Marsilius well advises, where he speaks in defense of a certain nobleman who had killed another person after an interval. The man slain had betrothed his sister by promise and had kept her for three months, and had then rejected her. Because of this, a great injury and much infamy were inflicted upon his family and the entire kin. Marsilius then adduces the abovesaid laws, which pronounce concerning a husband who kills his adulterous wife; and Bertazzolus offers the case of one who had killed his adulterous wife and had afterward, in his own defense, proved the adultery by the double confession of the same wife. Claudius Jr. testifies that the murderer was banished for a time by the prætor of Mirandola, and after the lapse of several months he was recalled by the Duke of Mirandola. [Citations.]

Afflicti cites the decree of the kingdom, beginning *Si Maritus*, which concedes impunity to a husband who kills his wife and the adulterer both, in the very act of adultery and without any delay. He then says that if both of these requisites are not present, the husband is excused in part, but not entirely; and so is punished more mildly. And in No. 2 he gives the reason; because whenever one commits a crime, under impulse of just anger, the penalty should be somewhat moderated, according to the aforesaid text. [Citations.]

Matthæus [Citation] adduces the excellent words of Theodoric³⁸⁴ as quoted by Cassiodorus [Citation], where we read: "For who can bear to drag into court a man who has attempted to violate his matrimonial [xxviii] rights? It is deep-seated even in beasts that they should defend their mating even with deadly conflict, since what is condemned by natural law is hateful to all living creatures. We see bulls defending their cows by strife of horns, rams fighting with their heads for their wethers, horses vindicating by kicks and bites their females; so even these, who are moved by no sense of shame, lay down their lives for their mates. How then may a man endure to leave adultery unavenged, which is known to have been committed to his eternal disgrace? And so if you have made very little false statements in the petition you offer, and if you have indeed only washed away the stain to your marriage-bed by the blood of the adulterer, taken in the act, and if you are looking back from your exile, which was evidently inflicted not by reason of a bloodthirsty mind, but because of your sense of shame, we bid you return from your exile; since for a husband to use the sword for the love of his sense of honor is not to overthrow the laws, but to establish them."⁴⁰²

Dondeus says this interpretation is clearly proved by the authority of a glossa in the chapter: *Ex litterarum*. [Citation.] For in the text, when these words are used: "your wife taken in adultery," a glossa explains the word "taken" as equal to "convicted." Marta says this opinion is much more just and equitable, and is commonly held. And Muta in the end offers a decision of the supreme court of the kingdom, by which a husband was condemned to the galleys for seven years.³⁹⁵ This was on account of the accompanying circumstances; for he had had his wife summoned outside of the city walls by his son, and there had killed her; and afterward her body was found to have been devoured by dogs. Dexartus testifies that it was thus decided in Sacred Royal Court, in condemning a husband only to exile. Sanfelicius also tells us that certain noble young men,³⁹⁷ who had killed their wives after an interval because of strong suspicion of adultery, were absolved by the Royal Council of Naples, in view of the quality of the persons concerned. In their favor, authorities of the highest rank had written, whose allegations this same author places under the said decision. And although some of these young men were condemned to the oars, he said that [xxix] this punishment had been imposed because⁴⁹⁹ of the mutilation of the privates which followed; because those who do such things are considered enemies to nature. And Calderini, although in the preceding numbers he inclined toward an opinion contrary to ours, came over to our side when he saw that Matthæus held that opinion.

And the reason is very evident; for whenever such an injury is suffered by fine natures, especially among the noble class, it is ever present with them, and continually oppresses the heart, and urges it on to vengeance for the recovery of lost honor, as Giurba well notes. [Citations.]

For this reason, it has always and everywhere been held in case of murder committed for honor's sake that there is no place for the ordinary death penalty, which should be mitigated at the discretion of the judge. And this rule has been followed, when the murder was committed after an interval, and even after a long interval. For the above-said reason, both Grammaticus and Gizzarellus affirm and hand down this opinion. The latter says that it has always been so adjudged by the Sacred Council of Naples, and that this opinion has always been accepted by our ancestors. [Citations.]

It was so judged by the high court of the Vicar, although it was dealing with a murder committed after two years, and by craft, by two brothers upon the adulteress in the presence of her sister's cousin. Cyriacus also speaks of the murder of a husband by his wife, because he was keeping a mistress and was contriving against her honor; and there he said that since just anger has a long continuance, because of its extreme bitterness, vengeance should always be said to follow immediately. [Citation.]

Another reason also is at hand, which is considered by the authorities, namely, that an injury, whereby the honor is hurt, is not personal, but real, and therefore can be resented at any time whatsoever, even [xxx] after the lapse of a very long time, as Giurba holds in our circumstances. [Citations.]

We have therefore a great many standard authorities who affirm, for most vital reasons, that murder committed, even after an interval, upon the person of the wife or of any one else, for honor's sake, ought not to be punished with the ordinary death penalty, but more mildly. Furthermore, these authorities bear witness that the matter has been so judged in the tribunals with which they are acquainted. No attention therefore should be paid to the opposite opinion held by Farinaccius [Citation]; for we plainly see that he speaks contrary to the common and usually accepted opinion in tribunals. [Citation.]

Still further it should be noted that the same author in *cons. 66 num. 5*, holds the very opposite, basing his opinion especially upon a text in the law of Emperor Hadrian [Citation], where a father had killed his son, who was not found in the act with his stepmother, but while out hunting and in the woods, that is, after an interval. And he was punished not with the death penalty, but by deportation. Several of the above-cited authorities offer the decision of this text likewise in corroboration of this opinion of ours. Our point is also proved by the fact that this same author in *quaest. 121* is rather doubtful; and there he acknowledges that for this opinion of ours the reason given above is very strong, namely, that "injured honor" and "just anger" always oppress the heart. And so he says in such a case one should note the sense of the text in the law *Non puto* [Citation], where Modestinus, Doctor of Law, says that he thinks that one would not make a mistake who in doubtful cases should readily give this response against the Fisc; and Farinaccius cites him so speaking.

But one should be on his guard against what this same Farinaccius asserts: namely, that this opinion of his, so far as he could see, was the one more approved by the Sacred Court. For since this point of doubt, as he himself confesses, had not then been advanced, he could not judge what would be the outcome if it had been proposed. And indeed the wisest of the said high authorities do not give their assent [xxxi] to his opinion, but rather hold the contrary, which is favorable to ourselves, as is seen in the decisions they have given from time to time. For it was so held on March 25, 1672, in the case of Carolo Falerno, who was condemned to an unusual penalty for the murder of Francesco Domenici; for he had found him coming out of a church, to which he had warned him not to go, as he was suspicious that the one slain was following his wife. In like manner with Carolo Matarazzi, August 15, 1673, who killed his wife on the foolish grounds that he suspected

her of illegitimate conception because of the absence of her menses; but this suspicion did not indeed correspond with the truth. And in law a matter may be even more mistaken and less observed by human intellect. [Citations.]

Likewise in a murder committed treacherously with an arquebus upon the person of Tomaso Bovini by Francesco Mattucio of Monte San Giovanni, a person of the very lowest class, merely because of the attempted dishonor of his sister. The attempt of the one killed was proved by two witnesses on hearsay of the one slain. On September 4, 1692, the penalty of life sentence to the galleys, to which the said Mattucio had been convicted on strongest proofs on the preceding July 12, was moderated by the sacred court, before the Right Reverend Father Ratta, of blessed memory. With good right, therefore, this same Farinaccius is expressly confuted and overthrown by Matthæus. [Citations.]

This opinion of ours is to be accepted the more readily when we consider that the husband is more stirred by the adultery of his wife than by the murder of his son. [Citations.] Yes, and even more than by the defilement of his daughter. [Citation.] So that if a husband ⁴⁸⁴ does not complain of the adultery of his wife, he is considered a pimp, as Paschal holds, where we read [xxxii] recently: "Adultery of the wife gives offense not merely to the husband, but blackens and stains the entire kin." [Citations.] That ⁴⁹⁵ this happened in the present case is plainly evident; for Abate Paolo, brother of Guido, was compelled not only to leave the city,³⁰⁴ in which he had lived for many years with highest praise, but even to pass out of Italy, because he was pursued undoubtedly by the greatest disgrace on account of this adultery. While ⁴⁸⁵ he was carrying on Guido's cause in the courts, he moved the laughter and sneers of almost all sensible and wise men, not to say of the very judges themselves, as usually happens in these circumstances. [Citations.]

Nor would it stand in the way of what we have said above if, without prejudice to the truth, we should admit (as the Fisc claims) that Count Guido killed his wife with the complicity ⁴⁰⁰ and aid of the said Blasio, Domenico, Francesco, and Alessandro, assembled for that purpose; for he could do that in order ⁵⁰⁵ to take vengeance upon her more easily and more safely. [Citations.]

[xxxiii] [Nor would it stand in our way if we admitted] that he had assembled the said men by means of money.³¹⁸ [Citations.]

Nor does this plea of injured honor cease with regard to the murders of the said father-in-law and mother-in-law;⁴⁰¹ for since their conspiracy in the adultery of their daughter is established, they themselves were among the causes of the injury and ignominy which resulted therefrom to the prejudice of the honor and reputation of Count Guido, their

son-in-law and her husband respectively. Therefore, these murders likewise ought to be punished with the same penalty as the principal, according to texts in the law *Qui domum*. [Citations.] And so they gave cause enough to Count Guido to take vengeance on them.

It is to be added, furthermore (as will be proved indeed, and as Count Guido himself has asserted in his testimony), that they themselves did another injury to his reputation by means of the civil suit which they brought on the grounds of the pretended birth of Francesca Pompilia; and not merely here in the City, but also in his own country, they distributed the most bitter libels,¹⁰⁹ which were added to this same lawsuit. Hence it can not be denied that Count Guido for this reason had conceived a just anger and provocation and that he had just cause for taking vengeance. This is according to the text [Citation], where Alexander the Third wrote to the Bishop of Tornacensis that a certain woman, who had killed her child, should be placed in a monastery, because she was reproached by her husband with the accusation that it had been conceived in adultery. For in crimes where anger does not entirely excuse, still the delinquent who kills in anger conceived from just grievance is somewhat excused. [Citation.]

And this is true in spite of the fact that the Fisc may claim that the penalty given in the Constitution of Alexander has been incurred. For in the [xxxiv] present case the crime can not be said to have been committed on account of hatred aroused by the lawsuit;⁴²¹ for in that suit Count Guido had gained a favorable sentence²⁶³ from A. C. Tommati,²⁶² which was sanctioned by the Supreme Tribunal of Justice. But the crime was committed indeed because of his just indignation. And this arose, first, from the ignominy growing out of the said pretense as to her birth; second, from the provocation given by the Comparini (now slain) in issuing and distributing the said papers;¹⁰⁹ and, third, from their conspiracy in the flight of his wife. For indeed this Constitution of Alexander does not apply where no guile is present and where some provocation has been given by the one hurt. Farinaccius very fully affirms this throughout *cons. 67*, where in the end he places the complete decision of the Sacred Court.

In any case, since with Count Guido two causes for committing crime concurred: one the aforesaid matter of the lawsuit, another wounded honor because of the lawsuit brought and the flight in which they conspired, wherefrom the adultery had followed, the cause of honor should be given attention, as it is the graver and consequently the more proportionate to the crime. [Citations.]

Likewise the penalty should not be increased in view of the place of the crime, because the defense of one's honor is so justifiable, and the anger and commotion of mind arising therefrom is so just, that reason for it can not be demanded, as Merlin Pignatelli [Citation] holds,

because of Giovanni Francisco de Carrillo [Citation] who speaks of an insult offered in prison. And No. 29 approves the decision because ⁵⁰³ that greater reverence is due to churches and other places consecrated to God, and in which the King of Kings and Lord of Lords dwells in essence; and yet one who commits crime in them from just anger and grievance is excused; for he asserts that all Canonists and other authorities there alleged by him unanimously acknowledge this.

More readily, therefore, should this conclusion follow in our case, since the said Francesca was not staying in a formal prison, but was merely keeping her home as a prison, under security of 300 scudi, that she would not depart therefrom; because one who has given bond and has sworn not to leave a place is neither in chains nor in custody. [Citations.]

[xxxv] Lucan holds that there are differences between being kept in chains and being committed under bond, etc. And Farinaccius holds that the word "custody" should be more strictly interpreted than the word "chains." [Citations.]

Even if, therefore, Count Guido had confessed that he killed his own wife, his father-in-law, and his mother-in-law, with the complicity and aid of the above-named helpers, he should not be punished with the ordinary penalty, for reasons given above. And much more readily should we follow this opinion since we can see that he confessed ⁴⁹³ only that he gave commands for mutilating his said wife (*ad sfrisian-dum*), if I may use the word of the authorities. In this case he is not to be held responsible for the subsequent death of his wife and of the others. Decian, *cons. 622, no. 4*, in this very condition, holds that one giving orders can be punished only for the manner of committing the crime, for which bodily punishment can not be inflicted.

Thus far the Fisc has been unwilling to rest satisfied with such a qualified confession. Yet since he claims the right to torture the accused for proving some further pretended truth, the torture shall be simple; nor can the torment of the vigil ⁵²⁶ be inflicted; because the Constitution given out by Pope Paul Fifth, of sacred memory, for the reformation of the courts of the City, stands in the way of that. This is included among his Constitutions as the 71st. By this it was decreed that such torment could not be inflicted unless these two features jointly concur: namely, that the crime be very atrocious and that the accused be burdened with the strongest proofs. [Citations.]

[xxxvi] But a crime is said to be "very atrocious" provided it is one for which a penalty more severe than mere death should be inflicted, such as useless mutilation, burning, and the like. *Farinaccius* ³⁸⁶ *qu. 18, num. 68*, etc. And such a death, as ignominious and infamous, has no place with the persons of nobles. [Citations.]

Hence it is much less so here, because we are not arguing about the death penalty even, which does not enter into the present case for reasons given above. And Gabriellus speaks to this effect on the point that such a crime may not be said to be qualified.

What has been said in favor of Guido, the principal, also stands in favor of the aforesaid Blasio, Domenico, Francesco, and Alessandro; because they can not be punished with the ordinary penalty, but only with the same penalty as the principal. [Citation.] Baldo cites a case under the statute which shows that one under bann for a certain crime can not be killed save by the enemy who had him put under bann; and he says that if the enemy has him assassinated, the assassin is not punished. And he gives this reason, that what is permissible in the person of the one giving the order should be held as permissible in the one to whom orders are given; and he says it had been so held in a case under that law. Castro [Citation] holds that when one is permitted under the statute to take vengeance upon a person who has given him offense, he is also permitted to assemble his friends, to afford him aid, and that they shall go unpunished, just as the principal does. He also asserts that Jacobus Butrigrarus³⁹⁸ [Citation] held thus, in *cons.* 277, where he speaks of the case of a husband who had assembled men to beat one who had wished to shame the modesty of his wife; he ordered his wife to pretend to give ear, and when the intriguer had come [xxxvii] murder was committed. And he says that men brought together in this way should be spared, because such an assembly was permissible for the husband, who was principal. [Citation.] Jason holds that in any vengeance permitted by law, one can not demand it of another; yet he to whom it is permitted may take fellows and accomplices with him for the same act, and if they kill in company with him they shall not be held to account for the murder nor for the aid they have given; and he says that this opinion⁵⁹⁹ should be much kept in mind. Cæpollinus also illustrates this in several cases, especially in that of certain men who had killed one keeping the company of the sister of the man who had assembled them; and he says that they should not be punished, just as the principal was not, and he gained his point so that it was thus adjudged. [Citations.]

Soccini also holds it should be thus adjudged, unless one wishes to say that they should be punished with a slighter penalty than the principal, as often happens in the case of auxiliaries. And he speaks in our very circumstances of men assembled by a husband for the sake of killing one who had polluted his wife. In these same circumstances, see also Parisius. [Citation.] Carera [Citation] speaks of a father who had his daughter (who had been keeping bad company) killed by an assassin; and he says that neither the father nor the murderer are to be held to account. [Citation.]

Marsilius also, after placing in the very beginning this principle, that when one matter is conceded all seem to be conceded which lead thereto, draws inference therefrom for the present case and many reasons for it are adduced. Cassanis also [Citation] holds that men assembled in this way are not held responsible either for the murder or for the aid furnished, if they do the killing in the company of the principal. And in these same circumstances Garzoni speaks, decision 71, throughout.

Nor does it stand in the way of our reasoning that one of the aforesaid defendants had inflicted wounds with his own hands, or had killed one of the victims; as Francesco has confessed that he inflicted four or five wounds [xxxviii] in the back of Francesca Pompilia. Even in these circumstances the rule holds good that auxiliaries shall not be punished with greater penalty than the principal. And so affirm individually the following authorities among those recently cited. [Citations.]

And Garzoni testifies that it was so adjudged in the said decision 71, where we read: "Or he may have with himself associates for this act," and if they kill the adulterers in company of the principal they are held to very slight account, either for the murder or for the aid given, and it was so adjudged.

And even in the more extreme case of one killing by assassination, and consequently in the absence of the principal, this is the opinion of Baldo [Citation], where we read: "And now it is inquired whether an assassin is ever punished, and I say he is not; because what is permitted in the person giving command is also permitted in the person commanded." Castro [Citation] also says: "Because what I can do of myself I can have done through my helpers who are necessary for that purpose." And Afflicti [Citation] says: "Either with one's own hands, or by help of another, even with the influence of money, and thus by an assassin; for Baldo says on this same point: 'What is permitted in the person giving command is also permitted in the person commanded'; and he witnesses that it was so adjudged." [Citations.] Marta [speaks as follows]: "Much more so because authorities affirm that a husband, who on account of fear can not kill the adulteress, may even by the help of money demand of another that he kill her, and neither of them is then to be punished."

But whatever Caballus [Citation] may say to the contrary, he bases his opinion upon Castro and Rollandus. Castro, however, favors our opinion, as is to be seen in No. 3. Rollandus should not be given heed; for when he offers this very same opinion about the statute which permits anyone to take vengeance, and says that since this kind [xxxix] of permission is personal it can not be passed on from one to another, this opinion of his is expressly contrary to the teaching of Baldo, Castrensis, Jason, and others, whom we have alleged above in paragraph

quae dicta sunt. And since this opinion of ours is milder and more equitable, it should hold good, as Jason decides on this point. [Citation.]

Nor can the punishment be increased because of the alleged carrying of prohibited arms;⁴¹⁸ because the latter offense is included then with the real crime. [Citations.] In Guazzin we read that this is so, even if for the carrying of the arms a greater penalty would be inflicted [than for the principal offense]. And so, whenever it is evident that the crime has been committed for honor's sake and for a just grievance, as in the present case, the carrying of the arms may go unpunished, or at least it should not be punished with a more severe penalty than should be imposed for the principal crime itself. Thus Policardus [Citation] well affirms when speaking of arms which are considered treacherous by the Banns.

These claims should hold good more readily as regards Domenico and Francesco, who are foreigners, and are therefore not included in any of the Apostolic Constitutions or Banns, which prohibit the bearing of arms under very heavy penalties. [Citations.]

Especially since they are minors as is made clear in the course of the trial, pp. 35 and 304; in which case they are likewise not bound by these Constitutions and Banns, which give judgment upon the crime of a minor. For the power to make and establish such regulations was lacking in the Prince or public official concerned. [Citations.]

Such are the matters which, in view of the excessive scantiness of time, I have been able to collect in discharge of my duty for the defense of these poor prisoners. Nor do I at all distrust that my Lords Judges, when they see that too little has been said, will wish to supply and offer what is lacking out of the high rectitude for which they are distinguished. For this would be quite in accord with the decree of Emperors Diocletian and Maximian, as related. [Citation.] [x1] And they will follow the advice of Hippolitus Marsilius, famous in criminal proceedings, who says that a judge is obliged by his office to seek out grounds of defense for the accused. [Citations.]

DESIDERIO SPRETI,

Advocate for the Poor.

[File-title of Pamphlet 2.]

*By the Most Illustrious and Most Reverend
Lord Governor in Criminal Cases:*

Roman Murder-case.

*On behalf of Count Guido Franceschini
and his Associates, Prisoners,
against the Court and the Fisc.*

*Memorial of law by the Honorable Advocate
of the Poor.*

At Rome, in the type of the Reverend Apostolic Chamber, 1698.

Most Illustrious and Most Reverend Lord:

The plea of injured honor which redeems Count Guido from the rigorous penalty that should follow for the commission of murders likewise urges mitigation of the ordinary penalty for Blasius and the associates who had hand in the murder, even though it may be pretended that they were paid thereto.³¹⁶ For it is taken for granted that we are dealing with a case far removed from assassination, because of the presence of a person who had real cause for vengeance, as the following authorities think in common. [Citation.]

There has been the strongest controversy among authorities as to whether a father or husband may demand of any one except his son the murder of his daughter or of his adulterous wife. And divided on the two sides of the question, they have contended strongly. [Citation.] Yet the majority are in favor of the affirmative and of the milder sentence; and often, in the event of such a murder, it has evidently been so adjudged. [Citations.]

But since this question lies outside of our line of argument, it would be vain and quite useless labor to take it up, nor is time to be wasted when we are so hard pressed for it. For we are evidently dealing with auxiliaries, assembled for committing homicide, according to the thought of the Fisc. Hence the conditions of a mere "mandatory" are not applicable; because of the immediate presence of the principal in the crime; for when he also lays hand to the crime, those who do likewise are not called mandatories,⁵¹⁰ but auxiliaries and helpers. [Citations.]

Furthermore, just as Guido himself is freed from the death penalty because of the said plea of injured honor, so likewise are his allies and auxiliaries freed, as the following authorities [xlii] unanimously assert. [Citations.]

Those who are cited in support of the opposite view do not pronounce opinion in our peculiar circumstances, but speak of a husband demanding of another the murder of his adulterous wife, and not of auxiliaries who do the killing in company with the husband, as in our case. [Citations.]

In such contingency, auxiliaries who give aid to a husband while killing his adulterous wife have always enjoyed the same indulgence as the principal himself; that is, they always escape the capital penalty, and indeed go entirely unpunished. [Citations.]

Nor does the distinction of Caballus make any difference, where he holds that auxiliaries may indeed assist with impunity a husband or a father killing a wife or daughter respectively, in order that these may kill the more safely; but that they can not lend a hand and actually

kill; [xlili] for in the latter case they are to be held accountable for the murder. Because, for foundation in making such a distinction, he plants his feet upon Paolo de Castro. [Citation.] But this is so far from proving his purpose that it rather turns back on him remarkably to his own injury. For after the latter sets before himself this kind of a difficulty, under No. 2, he adds: "But I hold entirely the contrary: that neither the one who did the killing nor he who made the assembly (as it may be called) are to be held for the murder for the purpose of inflicting the capital penalty."

This is also true in the council of Rollandus a Valle. [Citations.] May that learned authority pardon me;⁴⁹⁷ for even if he may attempt to confute Paolo de Castro in the said 154th council, which is in our favor, under the pretext that he speaks contrary to the common opinion, this claim does not suffice in view of the above-cited authorities. And if there were time, I would demonstrate this more clearly.

Furthermore Rollandus alleges Parisius, *cons. 154. lib. 4.* But he could well omit that, because No. 22 proves expressly contrary to him on its very face, where it says: "Under our very conditions was given that excellent decision of Paolo de Castro in the before-cited council. In stronger circumstances (which also include the present case) he concludes that those who knew of, or were present, or were associated with a husband in the act of the said murder, and who furnished him aid, ought not to be punished with a greater penalty than the principal, according to the rule concerning auxiliaries, beside the accurate authority of Marsilius." And he concludes that at the very worst, when the utmost rigor of it is considered, they should not be punished with more than a temporary banishment.

Furthermore, Rollandus in the said council is expressly confuted by Facchinus. [Citation.] Nor is this without vital reason. For just as a qualification that modifies a crime in the principal delinquent increases it also for the auxiliaries, whenever they are aware of it, so all sense of equity demands that a qualification that diminishes the penalty for the principal, even though it be unknown to the auxiliaries, shall act in favor of them also. [Citations.] Hence Caballus remains without a stable foundation, and is opposed to the opinion of the many doctors here alleged, who make no distinction between those who simply assist and those taking a hand in the murder; and indeed all of them [xliv] speak of auxiliaries. Furthermore, it is found that this has often been the judgment, even in the more extreme circumstances of one commanded to a murder, as was said above. And so strong is the plea of ⁵¹¹ injured honor that not only does it extend its protection to mere mandatories, but even to mandatories whose case is modified by the circumstance of assassination. And it causes them to be absolved, as we find that it was so decided. [Citations.]

Hence if both mandatories and assassins are redeemed from the ordinary death penalty, whenever they kill an adulteress at the command of the husband, it necessarily follows that the distinction of Caballus is not a true one, nor is it accepted in practice. For if they are mandatories, we can not deny that they may kill with their own hands; and nevertheless, not to speak of the other decisions cited above, Clar. [Citation] testifies such a decision favorable to the accused was handed down, contrary to the opinion of Caballus.

If, therefore, Blasius and his fellows are not to be punished with the death penalty for affording aid in the murders, vain is the question whether they can be subjected to the torment of the vigil⁵²⁶ for the purpose of having the very truth from their own mouths. For this procedure demands two requisites: one that the most urgent proofs stand against the accused, and the other that the crime be very atrocious, according to the prescript of the Bull. [Citations.]

And although the powers of this Tribunal are very great for the dispensing with one of the said requisites, yet I have never seen the said torment of the vigil inflicted unless when there was no doubt that the crime, for which the Fisc was trying to draw confession from the accused, deserved the capital penalty. We can not believe that the prosecution expects to make a case to this end because of the pretended conventicle;⁴⁰⁹ since those who are assembled are not to be held under the penalty for conventicle, but only the one who assembled them is so held, as Baldo well asserts. [Citations.] Nor in this case can the penalty for the asserted conventicle be made good [xlv] against Count Guido himself, since the cause for which he assembled the men aids him in evading the penalty; inasmuch as one may assemble his friends and associates for the purpose of regaining his reputation. [Citations.]

For this has been well proved, that whenever any one for just grievance assembles men to avenge his injury, he has not incurred the crime and penalty of conventicle.

And although Farinacci, *quaest. 113, n. 55*, declares that this holds good provided the vengeance be immediate, but that it is otherwise if the vengeance be after an interval, yet I pray that it be noted that in either case, if it concerns vengeance for a personal injury (in which conditions he himself speaks), and therefore when for an injury which wounds the honor, such vengeance is at all times said to be taken immediately. For such an injury always urges and presses, because it should be termed the restoration and reparation of honor (which the one injured in his reputation could not otherwise accomplish), rather than vindication and vengeance, as we believe was satisfactorily proved in our other plea in behalf of Count Guido.

But all further difficulty ceases with this consideration: prosecution can be brought for conventicle, if the men were assembled for an evil

end and no other crime followed therefrom; but when, according to the sense of the Fisc, they have been called together for committing murders, and these are really committed, no further action can be taken as regards the prohibited conventicle, but rather for the murders themselves; for the assembling of the men tended to this same effect. [Citations.] And it is for this reason more particularly: because when the beginning and the end of an act are alike illegal, the end is given attention, and not the beginning, as Bartolo teaches us. [Citations.]

It is to be added still further, that the assembling of men is not illegal in itself; [xlvi] indeed it is possible for it at some times to be both permissible and worthy of approval, as in the cases related by Farinacci. But it is illegal because of its evil consequences and the base end for which it is usually made. Hence, as the assembling of men is prohibited, not in itself, but because of something else, the end ought to be considered rather than what precedes the end.

Nor should the rigorous penalty of death be inflicted at all upon Domenico Gambassini and Francesco Pasquini for the pretended carrying of arms ⁴¹³ of illegitimate measure; because they are foreigners and had not stayed long enough in the Ecclesiastical State so that their knowledge of this law could be taken for granted. Nor ought it to be inflicted upon the others; for even if the death penalty is threatened by the Constitutions and Banns for the bearing or retention of them; yet since the carrying of this kind of arms is not prohibited for reasons in itself, but because of the pernicious end which follows it, or can follow it; and because this bearing of arms was looking toward the said murders; and because these, although they are not entirely permissible, are not utterly without excuse, the crime of carrying such arms should be included with the end for which they were carried; because the one is implied in the other, nor may the means seem worse than the end. And although, according to the opinion of some persons, the penalty for carrying arms is not to be confused with the crime committed with them, whenever the latter is the graver, yet this seems to be so understood when a crime is committed with them which is entirely illegal and without excuse. But this is not so when the crime is decreased and extenuated, and indeed excused in part, because of the reason for which it was committed.

In any case, the bearing of arms, according to common law, is but a slight crime. [Citations.]

Although by special Constitutions and Banns the penalty has been increased almost to the highest possible point, yet this kind of increase does not change the nature of the crime. And just as in the eyes of the common law [xlvii] torture is not inflicted for getting the truth from those indicted for the said carrying of arms, in view of the insignificance

of the crime, in like manner it can not be inflicted by the force of Constitutions and Statutes which have increased the penalty. [Citations.]

And this is especially true in the case of the torment of the vigil, which can not be inflicted for a crime that is not in its very nature most atrocious, but that is held as such, so far as the penalty is concerned, merely by the strength of a decree. This holds good unless indeed the nature of that crime is changed according to the method of proceeding in it. [Citation.]

And we see in the Banns of our Illustrious Lord Governor that he expressly declared this, when he wished to proceed with the torment of the vigil in cases, in which he could not proceed legally; that of a certainty he would not do so. Nor would he indeed have done this, if he could have inflicted such tortures in the case of crimes which are not capital by common law, but are to be expiated with the death penalty by the rigor of the Banns.

H. ARCANGELI,
Procurator of the Poor.

[xlviij]

[File-title of Pamphlet 3.]

*By the Most Illustrious and Most Reverend
Lord Governor in Criminal Cases:*

Roman Murder-case.

*In behalf of Blasio Agostinelli and his Associates,
Prisoners, against the Fisc.*

Memorial of fact and law.

At Rome, in the type of the Reverend Apostolic Chamber, 1698.

[xlix]

SUMMARY.

[Pamphlet 4.]

JUNE 24, 1694.

No. 1.¹¹⁰

The sworn testimony of a witness as to the poverty of said Count Guido Franceschini and the miseries suffered by the Signori Comparini while they stayed in his home in the city of Arezzo.

Angelica, the daughter of the deceased Pietro and Giovanna Battista of Castelluccio, in the Diocese of Arezzo, about 35 years of age, was examined by me on behalf of Pietro Comparini, against any one whomsoever, and put on permanent record; as to which testimony, she took oath to speak the truth, as is seen below.

I tell you in all truth, sir, that while I was staying in Arezzo last January⁹⁸ in the home of Signora Maddalena Baldi⁹⁸ Albergotti, the chance was offered me to go and serve Signora Beatrice Franceschini and her sons, etc. I decided to do so, and when I had gone to the home of the Signori Franceschini I spoke with the said Signora Beatrice. She drew me aside into a little room and told me that she would take me as a servant, but that I should never have any private dealings with the two old people who were in the house; one of them was Signor Pietro Comparini, and the other Signora Violante, his wife. She charged me still further that if either of the two old people chanced to call me into their chamber, I should not go without first asking her permission. On these terms I accepted the service. After I had entered thereupon, I noticed that Signora Violante stayed in her room most of the time, weeping, and though the Comparini were stiff with cold, the room was without fire. Hence I took pity on her, and without the knowledge of Signora Beatrice, I took the coals from my own brazier and carried them to her. But no sooner did I offer them to her than Signora Violante ordered me out of the room, lest Signora Beatrice might take offense that I had done this act of charity. Also, once among the many times, when Signora Beatrice found it out she made me leave the coals in the fireplace and snatched the shovel from my hands, and threatened me, saying that if she had wished it she herself would have come to bring it; because she did not want me to do any service whatsoever for the said Signori Comparini. And the Comparini could not even speak among themselves, because Signor Guido Franceschini, the Canon Girolamo his brother, and Signora Beatrice, their mother, would stand at one door or another of the apartment and listen to what the said Signori Comparini were saying to one another. This occurred every evening and morning until the said Signor Pietro left the room and the house. And when he returned at

night they were unwilling for me to make a light for him on the stairway. And once when Signor Pietro came back home about half past six in the evening, and I heard him scrape his feet, I took up the lamp to go and meet him. But Signor Guido noticing that, snatched the lamp from my hands, [1] telling me that I had better keep still and that I had better not approach unless I wished to be pitched out of the window. And this seemed all the worse to me, because when I first entered upon the service of the said Franceschini I had heard it said around the house that one evening, as Signor Pietro was coming back home, he had fallen, while ascending the same steps without a light, and that he had made a very ugly bruise, because of which he had had to keep his bed for many days. At the same time, while I was in the said service, it chanced one morning at breakfast that the Franceschini gave some offense to Signora Violante, because of which a mishap befell her. For no sooner had she reached her own room than she threw herself into a straw-chair and swooned away. When Signora Francesca Pompilia, wife of the said Signor Guido, found it out, she began to weep and to cry out with a loud voice, saying, "My mother is dying." Whereupon I ran to Signora Violante and began to unlace her, and turned to bring her a little vinegar and fire. But because there was no fire I took some wood and put it in the fireplace to kindle it. When Signora Beatrice saw this she snatched the wood from the fire, in great anger, and told me to take the ashes, which were quite enough to warm her feet. So I took the ashes that were in the fireplace, but because of the intensely cold weather they were cool when I reached the room where the Signora Violante was half dead. Accordingly, the Signora Pompilia and I, both of us weeping, unclothed Signora Violante and put her in the bed, which was as cold as ice. And because I was crying when I returned to the kitchen, after having put Signora Violante to bed, Signora Beatrice said to me: "Do you want me to take a little hemp and wipe your eyes?" Signora Francesca Pompilia also heard this, and she made some complaint to Signora Beatrice, who did not want me to return to the room again nor to make a little gruel, as Signora Violante had ordered.

It happened a few days later, during the month of February following,⁸⁸ that while the Signori Franceschini, Francesca Pompilia, Signor Pietro, and Signora Violante were at the table, they began talking of their purpose of sending me away, as the Franceschini had already dismissed me from service. When Signora Francesca Pompilia, who was at the table with the others as I have said above, heard this, she remarked to Signor Pietro and Signora Violante: "Do you know why they wish to send her away? They believe she wished to censure me because Signora Beatrice said some days ago that she would take hemp and wipe the tears from her eyes, when she was weeping over the

accident that happened to you, mother." Then Signor Pietro spoke up and asked the Signori Franceschini to keep me in their good graces for eight or ten days more, for if he wished to return to Rome with Signora Violante [li] he would take me with them. And he said he could expect this favor at their hands, as it was the first he had ever asked of them. To this, none of the Franceschini replied; but Signor Guido rose from the table and, approaching me, gave me two very good licks. The others then came up. While he was doing this, the Canon, his brother, also gave me some kicks, and his mother struck me and told me to leave at once. As soon as Signora Violante saw and heard this she took pity on me and exclaimed to the said Signori: "Where do you wish the poor thing to go now?" And all the Franceschini with one accord said to Signora Violante: "You get out with her, too." And they called her "slut," and other insulting names, so that Signora Violante went to her room to put on her wraps. The Canon⁵¹ drew a sword and ran after her into the room and shut the door. I, fearing that he would inflict some wounds upon Signora Violante, ran to enter the room and found that the Canon had locked himself within. So myself and Signor Pietro and Francesca Pompilia began to weep and to cry out for help, thinking that the Canon would kill Signora Violante there inside. And after some little time, I left the house, while the said couple and Signora Francesca Pompilia were still making outcry to the Signori Franceschini.

During all the time I remained in the service of the said Signori Franceschini at Arezzo, as I have said above, I can say of a truth that every morning and evening at the table I served the said Signori Franceschini, Signora Francesca Pompilia, Signor Pietro and Signora Violante Comparini. For the food of all this tableful, the Franceschini bought on Saturday a sucking lamb, on which they spent, at most, twelve or fourteen *gratie*. Then Signora Beatrice cooked it and divided it out for the entire week. And the head of the lamb¹¹⁷ she divided up for a relish three times, and for the relish at other times she served separately the lights and intestines. During the days of the week when they ate flesh there was no other sort of meat on the table to satisfy the needs of all the tableful. When he did not buy the lamb on Saturday,¹¹⁸ as I have said, Signor Guido gave money to Joseph, the house-boy, to buy two pounds of beef. Signora Beatrice herself put this to cook every morning, nor was she willing for the rest to meddle with it, and they ate therefrom at the table and carved for the evening meal. And because this meat was so tough that Signor Pietro could not eat it (as they had not cooked it enough), Signor Pietro did without eating meat, for the most part, and ate only a little bread, toasted and in bad condition, and a morsel of cheese. [lii] Thus Signor Pietro passed the days when they bought beef. On fasting days he ate vegetable soup

with a little salted pike, and sometimes a few boiled chestnuts. But always, whether on fasting days or not, the bread was as black as ink,¹¹⁹ and heavy, and ill-seasoned. Then the wine which served for the table was but a single flask; and, as soon as the wine was poured into this, Signora Beatrice made me put in as much more of water. And so I made out to fill the wine flask, half of it being water, and very often there was more water than wine.¹¹⁷ This flask she put on the table, and ordinarily it sufficed for all those eating, although at most, the flask did not hold more than $3\frac{1}{2}$ *foghliette* [half-pints] according to Roman measure.

Furthermore, I say that, not many days after I had left this service, it was public talk throughout Arezzo that Signor Pietro had gone home about half past six in the evening and had found the street door shut so that he could not open it, and he was obliged to knock. When Signora Violante saw that no one about the house was going to open the door she herself went downstairs to do so, but the door was locked with a key. And although she called Signor Guido and others who were in the house, yet no one stirred to go and open it. Therefore Signor Pietro went to sleep at the inn, and in the morning returned to see Signora Violante and Signora Francesca Pompilia. It was likewise said throughout Arezzo that when Signor Pietro complained at having been locked out of the house by the Canon, and when both Signor Pietro and Signora Violante reproached them bitterly about it, a new quarrel arose among them, and because of it both the Signori Comparini were driven out of the house. Signora Violante was received at the home of Signor Doctor Borri, where she dined that evening and spent the night. And Signor Pietro went to the inn to dine and sleep.

When I heard that, I went to the house of Signor Borri to see Signora Violante, but was not admitted. And the wife of Signor Borri told me to go and tend to my own affairs. For she did not wish the Franceschini, who lived opposite, to perceive that I had gone there to see Signora Violante, as some disturbance might arise therefrom. Then the next morning I went to the inn, where I had been told Signora Violante had gone to find Signor Pietro, but I did not find either of them, and was told by the host that they had gone out. So, not knowing where to find them, I returned to the home of Signora Maddelena Albergotti, where I was staying. And I heard afterwards that both Signor Pietro [liii] and Signora Violante had returned to the Inn, where they had breakfasted. Then by the interposition of the Governor of Arezzo they were reconciled with the Franceschini, and they returned indeed to the house of the latter. I heard also that the Franceschini continued to maltreat and insult the said couple, as they had continually done while I was in their service. Therefore they were finally obliged to leave Arezzo and go back to Rome.¹⁰⁰

All the abovesaid matters I know from having seen and heard the ill-treatment, which the Franceschini inflicted upon the Comparini, and the insults which they offered them and Signora Francesca Pompilia; and likewise from having heard them talked about publicly throughout Arezzo, where it is known to everyone and is notorious, and where there is public talk and rumor about it.

JUNE 17, 1697.

No. 2.

Various attestations¹¹¹ as to Francesca's recourse to the Bishop and Governor because of the cruelty of her husband and relatives.

To whomsoever it may concern :

We, the undersigned, attest as true: That Signora Francesca Pompilia Comparini, wife of Signor Guido Franceschini, has many and many a time fled from home and hastened now to Monsignor the Bishop,¹³⁹ and again to the Governor,¹³⁵ and also to the neighbors, because of the continual scolding and ill-treatment which she has suffered at the hands of Count Guido her husband, Signora Beatrice her mother-in-law, and the Signor Canon Girolamo her brother-in-law. We know this from having met her when she was fleeing as above, and from the public talk and the notoriety of it throughout the city of Arezzo. In pledge of which, have we signed the present attestation with our own hands this abovesaid day and year, etc.

I, CANON ALESSANDRO TORTELLI, affirm the truth to be as abovesaid, and in pledge thereto have signed with my own hand.

I, MARCO ROMANO, affirm the truth to be as abovesaid, and in pledge, etc., with my own hand.

I, ANTONIO FRANCESCO ARCANGELI, affirm the truth to be as is contained above, with my own hand.

I, CAMMILLO LOMBARDI, affirm as is contained above, with my own hand.

I, FRANCESCO JACOPO CONTI⁸⁵ of Bissignano affirm as is contained above, and in pledge, etc., with my own hand.

I, URBANO ANTONIO ROMANO,¹⁴⁴ a priest of Arezzo, and at present Curate of the parish church of St. Adriano, affirm the truth to be as is contained above, and in pledge thereto have subscribed with my own hand.

Then follows the identification of the handwriting in due form, etc.

[liv] Most Illustrious Sir, my most Honored Master :

Extract from a letter written by D. Tommaso Romani, uncle of Guido Franceschini, to Pietro Comparini in Rome.

I can not do less, etc., departure, she has been little like the Signora Francesca, etc.; she fled from home, and went into San Antonio. And thither ran also Signor Guido, the Canon, and Beatrice, etc., in order that she might come back, and in that belief the Signora Francesca returned home, etc. Yesterday, Signora Francesca and my sister were in the Duomo at sermon. At its close, while she was going away and was near the gate of Monsignore,¹³⁹ Francesca fled into the Palace, which is very near by. This was about seven o'clock in the evening, and there was a fine row in the Palace, etc.

Most Illustrious Signor and most Cherished Master :

Extract from another letter written by Bartolomeo Albergotti, a gentleman, to Pietro Comparini.

At my return, etc., the Signora, his wife, has been melancholy, and two evenings after your departure, she made a big disturbance, because she did not wish to go and sleep¹¹⁵ with Signor Guido her husband, etc. The day before Palm Sunday the Signora went, etc., to preaching, etc., and in leaving there she rushed into the Palace of the Bishop,¹³⁹ etc. She took her station at the head of the stairs¹⁴¹ and stayed there until half past six in the evening; and neither Signora Beatrice nor Signor Guido were able to make her return home. Yet the Bishop did not give her an audience, but his secretary hastened thither and urged Signor Guido and Signora Beatrice not to scold the Signora his wife, etc. And after quite enough of such disputes, they took her back home, etc.

MARCH 21, 1697 [for May.]

No. 3.

Deposition of Francesca as to letters¹¹⁴ asserted to have been written by her to Abate Franceschini, and previously outlined by her husband; recorded in the prosecution brought for her pretended flight.

Francesca Comparini, when under oath, etc., when questioned whether she had ever sent any letter to Abate Franceschini here in the City, while she lived in Arezzo, replied: While I was in Arezzo I wrote, at the instance of my husband, to my brother-in-law Abate Franceschini, here in Rome; but as I did not know how to write, my husband wrote the letter with a pencil¹¹⁴ and then he made me trace it with a pen and ink it with my own hand. And he told me that his brother had taken pleasure in receiving such a letter of mine, written by myself. This happened two or three times.

When questioned whether if she should see one of the letters written as is told above, and sent to the City to the same Abate Franceschini, she would recognize it, etc.

She replied: If your Honor would cause me to see one of the letters written by me, as above, and sent to Abate Franceschini, I should recognize it very well.

And when at my command the letter was shown to her, about which there was discussion in the prosecution, and which begins *Carissimo Cognato sono con questa*, and ends, etc., *Arezzo 14 Giugno 1694, affetionatissima Serva, e Cognata Francesca Comparini ne Franceschini.*

[lv] She responded: I have seen and have examined carefully this letter shown me by the order of your Honor, which begins *Carissimo Signor Cognato sono con questa*, etc., and ends *Francesca Comparini, ne Franceschini*, and having looked at it, I think, but can not swear to it as the truth, that this is one of the letters written by me to my brother-in-law, Abate Franceschini, in conformity [to my husband's wishes] as is said above.

Dearest Brother-in-law:

No. 4.¹¹⁸
The tenor of the letter
written as above to Abate
Franceschini.

I wish by this letter to pay my respects to you, and to thank you for your efforts in placing me in this home, where, far removed from my parents, I live now a tranquil life and enjoy perfect safety, not having them around me. For they grieved me night and day with their perverse commands, which were against the law, both human and divine: that I should not love Signor Guido, my husband, and that I should flee by night from his couch.¹¹⁵ At the same time they made me tell him that I had no congeniality with him and that he was not my husband because I have no children by him. They also caused me to run away often ¹⁴⁰ to the Bishop ¹³⁹ without any reason whatever, and made me tell the Bishop that I wished to be divorced from Signor Guido. And for the purpose of stirring up great discord in the home, my mother told the Bishop, and Signor Guido, and then the entire town, that the Canon my brother-in-law had solicited me dishonorably,⁵² a thing that had never been thought of by him. They urged me to continue these evil counsels, which were far from right and far from the submission due to my husband. And they left me at their departure their express command, by my obligation to obey them, that I should kill my husband, give poison to my brothers-in-law and my mother-in-law, burn the house and break the vases and other things, in order that in the eyes of the world it might not appear after their departure that it was they who had counseled me to commit so many crimes. And finally at their departure, they left me, as a parting command, that I should choose for myself a young man to my taste, and with him should run away to Rome, and many other matters, which I

omit for blushing. Now that I have not her at hand who stirred up my mind, I enjoy the quiet of Paradise, and know that my parents were thus directing me to a precipice, because of their own rage. Therefore, now that I see in their true light these deeds proposed by the command of my parents, I pray for pardon from God, from yourself, and from all the world. For I wish to be a good Christian and a good wife to Signor Guido, who has many times chidden me in a loving manner, saying that some day I would thank him for the reproofs he gave me. And these evil counsels which my parents have given, I have now made known, and I acknowledge myself

Your most affectionate servant and sister,

FRANCESCA COMPARINI *ne* FRANCESCHINI.

AREZZO, June 14, 1694.

Outside directed to Abate Paolo Franceschini, Rome.

[lvi]

[The deposition of Pompilia is translated pp. 69-73 in its completer form an given in the Summary for the Defense. The only additional fact given is this version is the date of the affidavit, Monday, May 13, 1697.³⁵⁴ She had been arrested at Castelnuovo May 1.]

No. 6.

Attestations of priests and other persons, worthy to be accepted in all respects; who gave Francesca assistance even till her death; they speak of her honesty, and her declaration that she had never violated her conjugal faith.

[lvii] I, the undersigned, barefooted Augustinian priest,³⁵⁵ pledge my faith that inasmuch as I was present, helping Signora Francesca Comparini from the first instant of her pitiable case, even to the very end of her life, I say and attest on my priestly oath, in the presence of the God who must judge me, that to my own confusion³⁵⁶ I have discovered and marveled at an innocent and saintly conscience in that ever-blessed child. During the four days she survived, when exhorted by me to pardon her husband, she replied with tears in her eyes and with a placid and compassionate voice: "May Jesus pardon him,³⁵⁹ as I have already done with all my heart." But what is more to be wondered at³⁵⁷ is that, although she suffered great pain, I never heard her speak an offensive or impatient word, nor show the slightest outward vexation

either toward God or those near by.³⁶⁷ But ever submissive to the Divine Will, she said: "May God have pity on me," in such a way, indeed, as would have been incompatible with a soul that was not at one with God. To such an union one does not attain in a moment, but rather by the habit of years.

I say further that I have always seen her self-restrained, and especially during medical treatment. On these occasions, if her habit of life had not been good, she would not have minded certain details around her with a modesty well-noted and marveled at by me; nor otherwise could a young girl have been in the presence of so many men with such modesty and calm as that in which the blessed child remained while dying. And you may well believe what the Holy Spirit speaks by the mouth of the Evangelist, in the words of St. Matthew, chapter 7: "An evil tree can not bring forth good fruit." Note that he says "can not," and not "does not"; that is, making it impossible to infer the ability to do perfect deeds when oneself is imperfect and tainted with vice. You should therefore say that this girl was all goodness and modesty, since with all ease and all gladness she performed virtuous and modest deeds even at the very end of her life. Moreover she has died with strong love for God, with great composure, with all the sacred sacraments of the Church, and with the admiration [lviii] of all bystanders, who blessed her as a saint. I do not say more lest I be taxed with partiality. I know very well that God alone is the searcher of hearts, but I also know that from the abundance of the heart the mouth speaks; and that my great St. Augustine says: "As the life, so its end."

Therefore, having noted in that ever blessed child saintly words, virtuous deeds, most modest acts, and the death of a soul in great fear of God, for the relief of my conscience I am compelled to say, and can not do otherwise, that necessarily she has ever been a good, modest, and honorable girl, etc.

This tenth of January, 1698.

I, Fra CELESTINO ANGELO of St. Anna,
barefooted Augustinian, affirm
as I have said above, with my
own hand.

Another
attestation
as above.

We, the undersigned, being interrogated for the truth, have made full and unquestioned statement on our oath, that we were present and assisted at the last illness from which Francesca Pompilia, wife of Guido Franceschini, died. She was often asked by her confessors and other persons whether she had committed any offense against the said Guido, her husband, whereby she

might have given him occasion to maltreat her in such a manner as to cause her death. And she always responded that she had never committed any offense against him,³⁵⁵ but had always lived with all chastity and modesty. And this we know from having been present during the said suffering, and from having heard all these questions and responses while we were giving her medical treatment, or otherwise assisting, and from hearing her respond to these questions, as above, during the four days³⁵⁰ while she was suffering from her wounds, as we have seen and heard her; and we have witnessed her dying the death of a saint.

In pledge thereto we have signed this present attestation with our own hands here in Rome this tenth of January, 1698.

I, NICOLO CONSTANTIO, etc., who assisted at the treatment of the said Francesca Pompilia during four days, attest as above, etc.

I, Fra CELESTINO ANGELO³⁵³ of St. Anna,³⁵¹ barefooted Augustinian, say that I was present from the first instant of the case, even to the end of her life, and was always ministering to her. She ever said "May God pardon him in heaven as I pardon him on earth;"³⁵⁹ but as for the matter they charge me with, and for which they have slain me, I am utterly innocent."³⁵⁵ In proof whereof she said that God should not pardon her that sin, because she had never committed it.³⁵⁶ She died as an innocent martyr in the presence of another priest, to the edification of all the bystanders, as I have affirmed above with my own hand.

[lix] I, PLACIDO SARDI, a priest, affirm with my own hand as the abovesaid Father, Fra Celestino, has declared, having been present as above.

I, the MARQUIS NICOLO GREGORIO, affirm as above with my own hand.

I, the undersigned, affirm what is contained in the above-written statement, as well as in the attestation of the reverend Father Celestino of Jesu and Maria. I assisted the abovesaid Signora Francesca Pompilia from the first, having picked her up from the earth where she lay in utter weakness because of her wounds. She had her head upon the legs of Signor Pietro Comparini,³²³ who was already dead. She made confession in my arms to the Principal of the Greek College, because she could neither rise up nor lie down. And from that hour I never left her, but always ministered to her even unto her death. She was the most exemplary and edifying)

Christian I have ever seen. For I saw her resigned to the divine will, and she always relied upon her own innocence, etc.

I, GIUSEPPE D'ANDILLO, with my own hand.

I, the undersigned, attest and affirm what is contained in all the said affidavits, from having assisted the said Francesca Pompilia, etc.

DIONYSIO GODYN, with my own hand.

I, LUCA CORSI, affirm with my own hand as is contained in all the said attestations, from having assisted day and night as long as the malady of the former Francesca Pompilia continued, and from having heard as above.

I, GIOVANNI BATTISTA GUITENS, apothecary, who have assisted at the treatment and care of the said Francesca Pompilia, affirm with my own hand as is contained in all the above affidavits and attestations, from having assisted continually throughout a night and a day at the malady of the same.

I, GIOVANNI BATTISTA MUCHA, the boy of the said Giovanni Battista Guitens, apothecary, affirm with my own hand as is contained above in the said attestation, from having assisted with the former Francesca Pompilia.

Full and unquestionable statement is given by me the here undersigned, Abate Liberato Barberito, Doctor of Theology, that, as I was summoned to assist at the death of the said Signora Francesca Comparini, I often noticed, and especially during an entire night, that the above-named defendant suffered the pains of her wounds with Christian resignation, and condoned with superhuman generosity the offenses ³⁵⁹ of the one who had caused her innocent death with so many wounds. [lx] I also observed during that night the tenderness of the conscience of the above-named. For she passed it in showing the unwavering feelings of an heroic and Christian perfection. And this so much so that I can attest ³⁵⁴ that during the experience I have had, having been four years Vicar in the Cure of Monsignor, the Bishop of Monopoli, of blessed memory, I have never observed the dying with like sentiments. And this is all the more so in an evil caused so violently by another. Therefore in pledge, etc. Rome, this tenth day of January, 1698.

I, ABATE DI LIBERATO BARBERITO, affirm as above, etc.

[File-title of Pamphlet 4.]

*By the Most Illustrious and Most Reverend
Lord Governor in Criminal Cases:*

Roman Murder-case with qualifying circumstance.

For the Fisc.

Summary.

At Rome, in the type of the Reverend Apostolic Chamber, 1698.

Most Illustrious and Most Reverend Lord:

The deplorable slaughter of the entire Comparini family, which occurred in this dear city of ours on the second night ³¹⁰ of the current month of January, ³⁶⁵ and the shedding of their blood, cries out from earth to God for vengeance upon the criminals. And in order that we may fulfill the obligations of the office we are occupying, we have paid down the price of toil to narrate here with faithful pen the series of events. From this, my Lords Judges may readily see what laws may be applicable for a decision as to this cause and for the punishment of the delinquents for the same deed, etc., and so Barbosa says in his axioms in jurisprudence, axiom 93, No. 1: "Just as from the deed the law takes its rise, so from the deed the law dies."

The series of facts, therefore, is as follows:⁴⁶² Guido Franceschini, of the city of Arezzo, married ⁴⁵⁸ ⁴⁶¹ Francesca Comparini, for whom, by Pietro and Violante Comparini, there were promised as dowry,⁹¹ among other matters, certain properties subject to a reversionary interest.⁶⁹ For they had brought this same Francesca up in their home as their own daughter, and as such they married her. Then, as the aforesaid Pietro and Violante had no other children, they left their home in the City to go and live in the home of Franceschini at Arezzo.⁹⁴ There, for some time, they continued to live together in peace; but, as often happens among friends and relatives, contentions and quarrelings arose.⁹⁵ On account of these, the aforesaid Pietro and Violante left that home and the city of Arezzo, and went back to Rome.¹⁰⁰ In the meantime, as the flame of this enkindled hatred increased, a lawsuit was instituted ²⁶⁰ as to the dowry once promised, but now denied by Pietro, on the pretext that Francesca was not indeed the daughter of the same Pietro and Violante, but that, after a pretense of her birth had been made,¹⁰³ she had been received and brought up by them. And for this reason, the said Guido and Francesca could not hope for the inheritance of the properties under the reversionary interest.⁶⁹ But although Franceschini gained a favorable judgment on this point,²⁶³ yet when appeal had been made on behalf of Pietro Comparini,²⁶⁴ Francesca declared that she was ill-treated in the home of her husband by himself, and therefore desired to leave that home. Accordingly, with the aid and companionship of Canon Caponsacchi, a relative of the said Franceschini, as is supposed, she ran away. But Franceschini had notice of his wife's [lxii] flight and, following her up, he overtook her

at the tavern of Castelnuovo. There he went to the governor²²⁶ of that place and saw to effecting the capture²²² of his wife and the Canon, as indeed followed. Then the quarrel was continued. A criminal suit²⁶⁹ was brought in this Tribunal of the Governor of the City;²⁷⁰ the process of action was arranged, and the counsel on both sides was often heard, both by word of mouth and in writing. At last it was decided that owing to lack of proof²⁷³ of adultery the said Canon should be banished to Civita Vecchia²⁷¹ and Francesca should be held in safekeeping.²⁷⁶ But because the Comparini claimed that the furnishing of food in the safekeeping was the duty of Franceschini, and the latter declared it lay with Comparini,^{282 283} the most Illustrious Lord Governor, having first secured the consent of Abate Paolo,²⁸⁸ the brother of Guido and his representative in the case, assigned the home²⁸⁴ of the Comparini to Francesca as a safe and secure prison under security.

While these contests were still pending,²⁸⁵ both in the civil and criminal cases, as well as in that for divorce brought by Francesca, the wife,²⁶⁶ this same Franceschini schemed to take vengeance upon the abovesaid. For the execution of this criminal purpose he brought together³¹² Domenico Gambassini of Florence, Alessandro Baldeschi of the region of Castello, Francesco Pasquini Antonii of the Marquisate of Monte Acuto, and Blasio Agostinelli of the town of Popolo, and dwelling at the Villa Quarata. He provided them with swords and dagger,⁴¹³ prohibited by the Bull of Alexander VIII, and entered the City in company with the aforesaid men. Approaching the home of the Comparini, at the first hour³²⁰ of the night, he secured the opening of the door to himself under the pretense of bringing a letter,³²¹ sent to Violante by the said Canon Caponsacchi, then staying at Civita Vecchia. As soon as the door of the home was opened by the said Violante,³²³ the aforesaid Guido and his companions immediately set upon her. She was cut to pieces with their swords and immediately fell dead. Pietro likewise was cut down and died. Francesca, however, tried to hide under a bed,³²⁵ but was found and wounded in many places. Then, as if God granted her the favor,³⁴⁸ she was not left utterly dead, though after a few days she also passed away; and thus she could reveal this monstrous crime. As soon as my Lord Governor had notice of this, with most vigilant attention, he saw that the malefactors were pursued beyond the City.³³³ Accordingly that same night they were discovered in the tavern at Merluccia³⁴⁰ with firearms and illegal swords, [lxxiii] still bloody,³⁴² and were taken back to prison. Then, when a case had been made against them, they were examined as to the crime. Some of them indeed confessed it, and although the others made denial of the management and knowledge of the killing of the entire family, yet against them there are most urgent presumptions of the knowledge and management abovesaid. Furthermore, from the

same prosecution the gravest proofs have resulted, such as can be but slightly attacked and controverted by the Defense.

Hence, when this cause may be presented to receive judgment, we believe that no foundation can afford defense for the criminals to escape the capital penalty, so far as they have confessed their crime, or can release those who have denied it from the rigorous torture of the vigil.⁵²⁶ For what if the Defense do strongly argue the question as to whether a husband who kills an adulterous wife, not immediately and when found in adultery, but after an interval,⁴⁰⁵ ought to be excused from the ordinary penalty of the *Lex Cornelia de Sicariis*? Some authorities indeed give an affirmative opinion for the excuse of the husband, as is to be seen in Giurba. [Citations.] Yet all of these authorities for mitigating the penalty upon a husband who kills his wife after an interval are moved by this reason: That since the sense of injured honor always oppresses the heart, it is difficult to restrain just resentment; for this reason the defense of the honor is said to be immediate when done as quickly as possible.

But there are indeed many other authorities who stand by the negative, asserting that a husband who kills his wife, otherwise than when taken in adultery and in acts of passion, should be punished with the ordinary penalty. [Citations.] D. Raynaldus [Citation] says this opinion is the truer and the more advantageous to the state, nor should one depart from it in giving judgment. Sanzio says that it was often adjudged in this Senate that a husband was not excused by adultery legitimately proved, if he killed his wife after an interval; [lxiv] and for this reason, because formerly, according to the law of Romulus, a husband could kill his wife, but the *Lex Julia* permitted him to kill only the vile adulterer, as Matthæus proves. [Citation.]

But in this our present show of fact we believe we are dealing with a matter outside of the difficulty of this proposed question. For the authorities cited above for the contrary opinion hold good, and should be understood to do so, whenever the contention is about a husband who has killed his wife without excess of law and with no concurring circumstances and aggravating qualities, and when moved only by just grievance. But it is otherwise when, as in our case, excess and contempt of law is present and aggravating circumstances and qualities concur.⁴⁰⁸ Laurentius Matthæus [Citation] testifies that, according to common practice, such a distinction has been followed out. And after he had affirmed that a husband should be excused from the ordinary penalty and be punished more mildly, he adds: "For these reasons, it is the common practice to weigh the effect of the grievance and to punish only the excess; so that if the suspicion of guile in the manner of killing is present (as he considers any circumstance which tends toward treachery) the penalty is aggravated."

The aggravating circumstances which concur in our case are indeed many, and they are so grave that any one of them is enough reason for imposing the death penalty or for qualifying the crime.

The first of these is the assembling of armed men;⁴⁰⁹ for according to decrees of the Governor of this City the penalty of death and of the confiscation of goods is inflicted upon the one assembling the men; and this is true even if those assembled are but four,⁴¹⁰ as is read in chapter 82 of the same Banns. This circumstance and quality can not be evaded on the authority of certain jurists who assert that it is permissible for a husband to kill his wife, even by means of men thus brought together. For the said authorities speak, and should be understood, in a case in which a husband may kill with impunity an adulterer and his own wife in the very act of adultery, or in the home of the husband. But it is otherwise if she is killed after an interval, or outside of the home of her husband; according to what is given. [Citation.] Or these matters might hold good if in no other way he could kill the adulterer and his wife. So think all authorities who can be adduced in favor of the husband. This can not be said in our case since Franceschini,⁴⁰⁹ while following his wife with firearms, could have taken [lxv] vengeance at the inn of Castelnuovo. But he had recourse to the judge,²²² and chose the legal way of punishing his wife and the Canon with whom she fled. Or these claims would hold good if he had assembled a smaller number of men, whereby the crime of conventicle would not have been established. And this is the more strongly to be held because we are not concerned with a deed that is unpunishable, and permissible by law, as I have said.

Nor do we believe that the Defense can make a claim that the husband may kill an adulterous wife after an interval with impunity; for all the authorities who can be adduced in favor of the husband free him indeed from the ordinary penalty, but not from an extraordinary penalty, as those adduced by us above in § *Hinc cum Causa* can be seen to hold. If therefore, in our case, the husband committed a crime punishable in itself, how could he assemble a number of men forming a conventicle prohibited by the Banns, without incurring the penalty threatened by them?

The second quality and circumstance is the carrying of arms^{413 406} contrary to the specification of the Constitution of Alexander VIII, which is extended to the whole Ecclesiastical State. Still less can the authority of jurists be alleged in excuse from this threatened penalty, if the husband kill an adulterer and the wife with prohibited arms. For aside from the response given by us in the explanation of the first circumstance of assembling and of conventicle (namely that these authorities hold good and should be understood to apply only in cases permitted by law, and therefore unpunishable), we say still further

that they have very little application as regards the arms we are discussing; since the said Constitution prohibits not merely the carrying of such arms, but even their retention, manufacture, or introduction into the City and the Ecclesiastical State, under the penalty of rebellion and criminal insult to the majesty of the law.⁴²⁰ And so far as we are acquainted with such cases as are permitted by law, the authority of these jurists should be understood to hold good concerning arms, the carrying of which is indeed prohibited, but not the retention and introduction under any pretext whatsoever, even the pretext of justice; as is included in this same Constitution § 1 where we read: "Or to carry them on any pretext whatever, whether of military service or of the execution of justice, and still less to keep them in one's home or elsewhere." And in § *Ad haec* it prohibits even the introduction of them: "the retention of them at home, in storehouses, and elsewhere, their introduction into the Ecclesiastical State, and their manufacture."

If therefore the retention and introduction of such arms is prohibited, even when on the pretext of executing justice, [lxvi] ridiculous indeed would be Franceschini's pretense that he could approach the City and the home of his wife with such arms to vindicate, after an interval, this pretended offense of honor. This is the more certain as the crime concerning such arms is grave and of itself is punished with the capital penalty, as we have proved. In this case, when the crime actually follows, if the penalty for carrying the arms is greater than for the crime itself, the penalty for the graver offense is held to apply, and includes the lighter. [Citations.]

The third circumstance is that Franceschini and the aforesaid men committed the murders in the very home and dwelling-place^{417 501} of the Comparini; because homicide is always said to be qualified when it is committed in the home of the one slain; since the home should be a safe refuge for its master, etc. Then also Franceschini entered with changed garb;^{418 504} in which case the murder is said to be committed *ex insidiis*. [Citations.]

The fourth quality and circumstance is that the said Francesca was under the power of the judge,⁴¹⁹ since the home, as we have said in our narrative of fact, was assigned to her under bond to keep it as a safe and secure prison. And hence she was under the protection of the court. [Citations.] And this is especially true when arguing in favor of the one who is under protection of the court, whatever may be said when arguing to his prejudice. And therefore the law holds that one under the protection of the court can not be killed under less penalty than the death [of the assassin]. [Citations.]

But all debate seems to cease since it is proven in the process that the said Franceschini approached the said home with his company of men with the thought and intent [lxvii] to kill not merely Francesca,

his wife, but also Pietro and Violante.⁴⁰¹ These, as he himself acknowledges, he hated⁴²¹ with a deadly hatred, because of the suit²⁶⁰ they had brought and because¹¹² they had urged Francesca to poison her husband and her brother-in-law, and had kept his wife in their home, so that still further, in the continuation of the adultery,²⁹³ his honor was offended. But aside from this, as we have said above, Francesca was placed in the said home²⁸⁴ by the authority of the judge with the consent²⁸⁸ of the brother of this same husband, and so the question does not enter as to whether a husband may lawfully kill the relatives, friends, and servants of his adulterous wife, even if he does suspect them of affording their leave or assent to the wife committing adultery; since the special rights and privileges conceded to the husband should not be multiplied against the wife, and be given greater scope, but rather should be strictly interpreted. [Citation.] This holds good not merely when one is arguing about the prejudice of a third party,⁵³⁴ but concerning one's sole prejudice. [Citation.] In our very circumstances we read that the permission can not be passed from person to person. [Citation.] Yet we can more truly declare that such an assertion of adultery on the part of Franceschini is calumniously false; for, in the very face of death, Francesca protested, to the very damnation of her soul, that she has given no offense³⁵⁵ to her husband's honor. This protestation is the more to be believed³⁶² since those about to die³⁶³ are not presumed to be unmindful of their eternal salvation. [Citation.]

The other causes adduced by Franceschini himself, so far as they are true, can indeed prove hatred and enmity existing between himself and the couple, which would tend in that direction and so would serve to prove in him a cause for their premeditated murder. But this is not sufficient to excuse him from the ordinary penalty of death, which premeditated homicide altogether demands. [Citations.] [lxviii] And it is for this reason, because the laws prohibit private vengeance (that is, vengeance which those without public office usurp to themselves because of their hatred, by killing or otherwise injuring men) [Citations]. Raynaldus affirms that in premeditated murder the ordinary penalty is inflicted not merely upon the slayer himself, but also upon all others who aid and give help, or concur in committing the murder by their help or counsel. [Citations.]

FRANCESCO GAMBI,
*General Procurator of the Fisc and of the
Reverend Apostolic Chamber.*

[File-title of Pamphlet 5.]

*By the Most Illustrious and Most Reverend
Lord Governor of the City
in Criminal Cases:*

Roman Murder-case.

*In behalf of the Fisc, against
Count Guido Franceschini
and his Associates.*

*Memorial of fact and law of the Lord Procurator
General of the Fisc.*

At Rome, in the type of the Reverend Apostolic Chamber, 1698.

[LXIX] Romana Homicidii cum qualitate.

[Pamphlet 6.]

Most Illustrious and most Reverend Lord Governor :

Since the chief defense of Count Franceschini, the Accused, as we have heard, consists in the pretended plea of injured honor, by which he was moved to crime, it is the office of the Fisc to disclose the lack of foundation for this plea, in order that this atrocious and enormous crime may be punished with the due penalty.

Therefore I assume that we ought to examine the foundations on which the asserted plea of injured honor may rest; namely the flight of the unfortunate wife from the home of her husband in company with Canon Caponsacchi, with whom she was taken at the inn of Castelnuovo, and the pretended love letters which were put forward in the prosecution of Pompilia for the said flight and departure. The pretended dishonesty of the wife is drawn from these two; but along with them other proofs were brought together in the said prosecution; the latter, however, are either altogether stupid or equivocal, or else unproven. This may be inferred from the dismissal of the said Francesca, his wife, merely with the precaution of keeping her home as a prison^{276 284} and of the Canon with a three years' banishment to Civita Vecchia.²⁷¹ Such action shows that in this same prosecution there was found by the Fisc no legitimate proof of dishonesty and of the pretended violation of conjugal faith, which the husband had charged against her.

And indeed, from the defenses then made and even from the trial itself, a very just cause has clearly appeared, which forced the luckless girl to flee from the home of her husband and to go back to her own home, there to live safely and quietly with her parents. Notorious indeed are the altercations⁹⁵ which, on account of the parsimony of the Franceschini home, straightway arose between the parents of the wretched girl on the one hand, and the Accused, his mother, and his brothers on the other hand. The former in vain bewailed the fact that they had been deceived by the show of no small opulence, on account of the false statement of an annual income of 1,700 scudi,⁸² which was afterward shown to have no existence. Indeed, while they stayed in the home of the accused husband in Arezzo, they were so badly treated by himself and his relatives⁹⁵ that after a few months⁹⁸ they were obliged to leave it and return to the City.¹⁰⁰ During the whole time they lived there, contentions and reproaches throve continually among them. The Comparini were indeed excited with just indignation by the deception they had suffered. This is evident from the letters of

Abate Paolo Franceschini, which presuppose these troubles and which were considered for the Defense by the Procurator of the Poor. These prove that hostility of mind had even then been conceived against the unfortunate parents, especially the one written March 6, where we read: "I write again to you that I do not wish to imitate him in his manner of writing, not being of his mind to sow broadcast in letters such words as would merit response by deeds and not by words; and these are so offensive that I have kept them for his reproof and mortification." And further on he says: "So that if you give us trouble, which I will never believe, you yourself will not be exempt therefrom." But sufficient proof results from the letters, as the following advise. [Citations.]

[lxx] And although these letters do not make clear the nature of their altercations, yet some of them more than prove the reproaches had so increased that their bitterness grew into hatred, as is evident from the letter of February 12, 1694, where we read: "But hearing from the one side or other that the bitterness between them, not to say the hatred, is increasing." It would be all too easy for the Accused and the Abate, his brother, to prove, by showing letters written to him, that the reproaches were unjust and were occasioned by the Comparini themselves. This is apparent from the tenor of the said letter, where we read: "Because I feel that the enemy of God has put strife among them, it is improper that I should fulfill my duty toward you of a reply." But since the Franceschini did not show such letters, the presumptive truth of these same complaints and of this cause of complaint and altercation is strongly against the ones thus concealing them. In such circumstances the Roman court thus affirmed. [Citations.]

But the truth of the charge of ill-treatment toward the parents, whom he was obliged by the dowry contract to provide with food, is also to be drawn from the deposition of a servant,¹¹⁰ as given in the Summary, No. 1 [cf. pp. xlix-liii]. And since this would excite the pity of any who read, it becomes all the clearer that, by such very ill-treatment of her parents, the mind of the wretched wife was greatly exasperated; for she kept grieving in vain at seeing them thus troubled; yes, and she was even prohibited from grieving.

And anyone may know that the return of her parents to the City would indeed disturb with a considerable and very just grief this wretched child who was not more than fifteen years old. For she was destitute of all aid, and was left exposed to her husband's severity, because of which she daily feared that she was in peril of her life. In vain did she have recourse to the Reverend Bishop¹⁸⁹ and to the Governor,¹⁸⁸ Summary, No. 2 [cf. p. liii]. In vain was the interposition of certain noblemen tried; which had proved utterly useless, as is evident from the letter of March 6, where we read: "But what remedy can I give you, when so many gentlemen, friendly to both parties have inter-

ferred to settle the troubles and it has not turned out well?" She might indeed think that no other remedy was left her than to flee from the abode of her husband and to seek again her father's home. As therefore she fled to escape deadly peril, her flight can afford no proof of dishonesty nor of the violation of conjugal faith; for it is attributable to a lawful rather than to a criminal cause. [Citations.]

But there was another urgent cause for her eagerly desiring to seek her father's hearth, namely the ill-health of her father. She speaks of this in the letter which mentioned [lxxi] that she can not look for the company of Gregorio Guillichini, and that this task had to be remitted to the Canon [Caponsacchi] also. Hence we can well infer that she was arranging for the flight for legitimate reasons.

No reliance whatever can be placed in the letter ¹¹² written by this same wife to Abate Franceschini. In that she thanks him for having joined her in marriage with the Accused, his brother. And she also acknowledges therein that, since the departure of her parents, she was living a life of utter tranquillity; because their evil persuasion, which was alienating her from her husband, had ceased. She also reveals a very base plan that had been proposed to her, namely to destroy the entire household. Now the wife in her sworn statement frankly confesses ⁴⁶⁷ that she wrote this letter to appease her husband, and that he had marked the characters,¹¹⁴ which she had afterward traced with a pen. This statement is found in an extract from her sworn testimony as given in our Summary, No. 3 [cf. pp. liv-lv]. And a mere reading of the said letter so thrills one with horror that it is incredible ¹¹² that the luckless girl could have written such matters to the injury and detraction of her own parents, unless she had been compelled thereto by fear of her husband. For this reason the same letter is given in our Summary, No. 4. [Cf. p. lv.]

But even just ground of fear, because of which the luckless girl was moved to flee, has come to light, namely the lawsuit ²⁶⁰ brought by her father against the Accused for the nullification of the dowry contract. This contract had been made on false grounds; for Pietro had believed that he was promising the dowry to his own daughter; but then, from a confession ¹⁰³ made by the mother, he had found out that she was none such and that Violante had made pretense of giving birth to the child for the purpose of deceiving her husband and barring his creditors.¹⁰⁷ Since Pietro had assigned all his property as dowry ⁹¹ (and indeed it was of considerable value when we consider the quality of the persons concerned) he soon raised a dispute about it. And we may well fear that very grave and even deadly hatred arose therefrom. Thereby the conjugal peace, which had been disturbed by long-continued altercation, was utterly destroyed by recrudescant hatred. For a lawsuit as to a considerable amount of money, much more as to an entire property,

would produce this effect, as daily experience well teaches us and as Grammaticus and others assert. [Citations.]

Such just fear should be well considered by a prudent judge, who will take into account the circumstance of the persons and of the time. [Citation.] In our case it may be absolutely affirmed that these matters should be so considered, inasmuch as not merely a girl of tender age (as was the unfortunate wife, who was destitute of all aid and exposed to the severity of the husband, who had sought her life with a pistol¹³² and had threatened her with death on trivial suspicion), but even a woman of greatest fortitude [lxxii] would be unable to bear being exposed to such constant risk of her life and would see the necessity of taking care of herself. And whatever the cause, even if it were merely supposititious, it would be enough to excuse her according to the text. [Citations.] And Canon Raynaldus holds that it is enough if one sees the signs or acts of manifest desire, or preparations thereto. How much more excusable and how worthy of pity should Francesca be considered, since she had such an urgent and such a well-verified cause for fleeing? Mogolon holds that the mere sight of arms, even though the one having them does not use them nor unsheathe them, is just cause for fear.

Nor can presumption of dishonor and of violated conjugal faith arise from the company of Canon Caponsacchi, with whom she fled, and for which flight he was condemned to three years' banishment in Civita Vecchia.²⁷¹ For the luckless girl was destitute of all aid, and the demands of her age, of her sex, and of her station in life, did not admit of her undertaking so perilous a journey either alone, or in company with any baseborn woman. For then, in escaping dangers at home, she might incautiously expose herself to even graver perils; as might have happened if while alone she had been overtaken by her husband in the journey. Nor could she find any safer companion than this very Canon, who was bound by friendship to the Canon Conti.³⁵ And the latter, who was a familiar friend and blood-relative of the Accused, although he had great pity upon her condition, judged it safer¹⁴⁵ for her to flee with Caponsacchi, whom he believed²⁸ to be apt and far-seeing to bring about the desired end. Otherwise she would have undertaken this flight with even greater risk. Therefore this necessary and prudent choice of the lesser evil excludes all suspicion of pretended dishonor. [Citations.]

This suspicion is also excluded by the manner in which the flight was put into effect, namely in hurrying to the City by the direct route and with the greatest possible speed.²⁰³ For if the unfortunate girl had fled for the purpose of satisfying her lust with the same lover, the Canon Caponsacchi (as was charged elsewhere and as is repeated now even more bitterly in order to prove the plea of injured honor), she would either have delayed somewhere out of the public highway,

where she could not be seized by the Accused, or she would not have approached the City with such great speed. She would have done neither of these, unless she were making the journey for the purpose of seeking again her father's hearth, where she hoped to find security for her life and her honor. It would be far too imprudent a plan for a lover to take a wife from the home of her husband to some other place where he could not possibly satisfy his lust. [Lxxiii] This improbability alone would be enough to prove the truth of the cause given by the wife in her affidavit—namely that she had fled to avoid the deadly peril in which she feared she was placed, and that she might return to her father's hearth. The Canon also gave her his aid and companionship out of mere pity,¹⁸⁰ and her honor was kept entirely untouched. The probabilities are always to be very much observed in arguing about a crime, or in excluding it, as the following hold. [Citations.]

Still less firmly established is the other ground for the asserted plea of injured honor, which has been offered elsewhere by the Accused on the basis of the asserted love letters.²³² These letters, it was pretended, had been written in part by that most wretched girl to the Canon, and in part by the Canon himself. All these, it was claimed, had been found in the privy of the inn at Castelnuovo,²³¹ where they were said to have been cast for the purpose of hiding them. Response was indeed then given by the Procurator of the Poor that the identity of the handwriting was unproved and uncertain; for the letters did not show to whom they were directed. And these responses were indeed admitted, since no punishment²⁷² was inflicted upon Francesca, and she was simply dismissed with the precaution of keeping her home as a prison.²³⁴ And even though these letters, when we investigate their bearing, seem to give proof of excessive good will,²⁵² yet Francesca could have made pretense of this for the purpose of winning over the Canon, who was reluctant (as she herself acknowledges in her affidavit) to afford her aid by giving her his company back to the City in the execution of her premeditated flight. It is indeed quite evident that the letters were prepared for this purpose. (Summary, No. 5.) [Cf. pp. lvi-lvii.] And therefore this wretched girl, who was destitute of all aid and was placed in imminent risk of her life, should be judged worthy of all pity, if with gentle and even with loving words she tried to entice the Canon, whom she believed was well suited to afford her aid.²⁴⁷ Nor can stronger proof of violated modesty be drawn from these letters written for the purpose of the flight than from the flight itself. Nor is it a new thing for the most chaste of women to use similar arts sometimes for quite permissible ends. In the sacred Scriptures we read that Judith⁴²⁶ did so to deceive Holofernes, for the purpose of freeing her country. This luckless girl

could therefore do so without any mark of dishonor, for the purpose of escaping deadly peril.

We may speak still further of her confidence in her own continence as well as in the integrity of the Canon. Concerning this, a certain witness,⁵⁴ examined by the Fisc in the said prosecution at the instance of Count Guido, who was then present, testifies to hearing from Gregorio Guillichini ¹⁴⁶ (likewise a relative of the Accused) as follows: "Signor Gregorio then added that the Signor Canon was going there for a good reason, and that therefore Signora Francesca had desired to go to Rome. And he told me also that no ill could arise from it, because there was not the slightest sin between them." The deposition of this witness, which is directly contrary to the party who had brought her into court, fully proves our point, as the following hold. [Citations.] [lxxiv] And therefore, since the luckless girl can be suspected of no evil from her association with Canon Caponsacchi, and since she had no other help more suitable for carrying out her plan, her dealings with him by letter ought to be excused as ordered to this end, even though we may read certain loving expressions in them. The latter, indeed, should be considered rather as courtesies adapted to winning his good will, and they should always be interpreted according to the thought of the one proffering them. [Citations.]

Still further, there is added the participation of the Canon Conti,³⁵ a nobleman and a relative of the Accused, who forwarded the attempt. It is incredible that he would have been willing to plot against the honor of Guido; but he would merely wish to snatch that wretched girl from imminent death because of his pity of her. And such participation is made clearly evident from the very letters which it is pretended were written by Caponsacchi.

Of lighter weight still are the other proofs of pretended dishonesty: [first] the approach of the Canon ¹⁷⁰ to the home of the Accused at night time, for the purpose of speaking with the wife who was slain; [secondly] the kissing ²⁰⁶ on the journey to Rome, concerning which Francesco Giovanni Rossi,²⁰⁵ driver of the carriage (commonly called calesse),¹⁹² bears witness; and [third] the pretended sleeping together ²¹⁵ in the same bed at the inn of Castelnuovo. As regards the first of these three, there is defect of proof; for it rests upon the word of a single witness only, Maria Margherita Contenti,^{54 171} and she endures the most relevant exception of being a public harlot,¹⁷² and so she alone can prove nothing. [Citations.] And since such approaching of the house was ordered to the permissible end of removing the wretched girl from the imminent peril of death, by taking her back to her father's house, it can not be brought as a proof of illicit commerce. For the mere possibility that it was done for this purpose is enough to oblige us to take it in good part, according to the text. [Citations.]

This is especially so since the very witness who swears to this approach of the home states, by hearsay from the said Gregorio Guillichini,¹⁴⁶ that it was to a good end [cf. p. lxxiii], and that no sin was taking place between the Canon and the wife who is now slain. And as Guillichini was better informed, and was indeed a friend [lxxv] and, as I understand, a relative of the Accused, this excludes all suspicion to the contrary. With this testimony another deposition seems to agree, namely, that of the Canon Franceschini, brother of the Accused, who when questioned as to whether he knew if any intimacy had existed between Canon Caponsacchi and Francesca, replied: "This we never knew of beforehand; but after the criminal flight the whole town said that there must surely have passed some correspondence between them." His ignorance quite excludes and renders improbable any furtive and illicit approach to the home by the Canon Caponsacchi. For if the Accused had indeed threatened to kill his wife on account of unjust suspicion of Caponsacchi, we may well believe that Guido himself, his brother, and all the household would have kept guard for her safekeeping with all their might. And so, the said approach to the home, if it had been frequent (as is alleged), or if it had been for an ill end, would have been observed by them.

[Secondly] under this same defect of proof lies the pretended kissing of each other on the journey. As to this matter only a single witness testifies, whose excessive animus is shown by his assertion; for he asserts that he saw this at night; nor does he give any reason for his seeing it, such as that the moon was shining, or that he could see because some artificial light was dispelling the gloom. As no such reason is given, he deserves no credence, as the following observe. [Citations.] Another very great improbability is added thereto—namely, that while he was driving the carriage with such velocity that it rather seemed to fly than advance swiftly, he could not have looked back to see such mutual kissing.²⁰⁶ This improbability likewise takes away from him all right to belief, according to what the following hold. [Citations.]

But the assertion of that most wretched girl herself is also well suited to exclude all suspicion of her pretended unchastity. This was made by her after she had suffered many severe wounds, in the very face of death³⁶³ itself, at the demand of the priests and other persons ministering to her. For, according to their attestation, she asserted that she had never sinned against her conjugal faith³⁵⁵ and had always conducted herself with all chastity and shame [cf. p. lviii]: "We were present and assisted at the last illness from which Francesca Pompilia, wife of Guido Franceschini, died. She was often asked by her confessors and other persons whether she had committed any offense against the said Guido, her husband, whereby she might have given him occasion to maltreat her in such a manner as to cause her death. And she always

responded that she had never committed any offense, but had always lived with all chastity and modesty." And Fra Celestino Angelo of St. Anna, of the order of barefooted Augustinians, in his testimony ³⁵³ bears even more exact witness to this constant assertion of her innocence, where he writes [cf. p. lviii]: "She always said, 'May God pardon him in heaven, [lxxvi] as I pardon him on earth, but as for the sin for which they have slain me, I am utterly innocent': in proof whereof she said that God should not pardon her that sin, because she had never committed it." ³⁵⁶ An assertion like this, indeed, given in the very face of death, ³⁶³ deserves all credence, since no one is believed to lie at such a time, ³⁶² as the following assert. [Citations.] Menocchius speaks in these very circumstances of one suspected of heresy, saying that such suspicion is removed if in the hour of death the accused say and protest that he had lived and wished to die and to trust according to what is pleasing to the Sacred Roman Church, etc. [Citation.] And Decian cites the opinion of Alberic, who declares that by means of an assertion of this kind, made before the Cardinals, the memory of Pope Boniface had been defended, and that this very Alberic had in this way defended Galeatius, Viscount of Mediolanum.

And this is more especially true since all the said witnesses agree that this most wretched girl died with the highest edification of the bystanders, and that she had always shown the deeds of Christian perfection, as we find in the said attestations, where we read: "And from having seen her die the death of a saint." [Cf. p. lviii.] And there is another statement of the said Father Celestino Angelo, which infers the innocence of her past life from her conduct just before death. All these matters are given in our Summary, No. 6.

But, however, rightly the Accused might draw some suspicion of his wife's dishonesty from her flight and from these letters, the tenor of which seems to prove them love letters (which suspicion could excite due anger), yet this would not make excusable such truculent vengeance, taken after so great an interval. For this vengeance was taken, not merely upon his most wretched wife, but also upon her parents, who were entirely off their guard and quite undeserving of such a fate. And these murders were attended with such grave circumstances, aggravating the crime, that he would have to be punished with death even if he had not confessed the murders. For although just anger because of violated conjugal faith usually moderates the penalty for a husband killing his adulterous wife, yet one can no longer argue for total impunity after an opportunity to take vengeance on the adulterer and adulteress has been thrown away. [Citations.]

But an especial and indispensable requisite is that the wife [lxxvii] be taken in adultery, according to the text. [Citation.] "For thus it wishes this power to lie with the father, if he take his daughter in

her very sin." Labeo also approves this, and Pomponius writes that she may be killed when taken in very licentiousness, and this is what Solon and Draco say. [Citations.] Much more does this hold good in the case of a husband, whose wrath may be kindled much more easily against a wife by sinister and unjust suspicion conceived about her. For the husband is not always accustomed to take good counsel for the wife, which the law presumes that the father does by natural instinct, etc.; and it excuses the father only when he kills his daughter along with her defiler, or inflicts wounds unhesitatingly upon her.

And this is so true that it is not enough if the wife be found only in acts that are remote from, or merely preparatory to adultery, as authorities commonly affirm. [Citations.] John Teitops holds thus, and I think it well to quote his words, since the Judges may not have him at hand, and he thus explains the words of the said text: "Therefore they argue that acts preparatory to adultery do not suffice, but the obscene commingling of limbs is required." And after citing his authorities, he adds: "And this is more clearly evident from the words of Solon as given by Lucian, the Eunuch," where we read: "Unless they lie who say that he was taken in adultery." And then he criticizes the opinion of Accursius, who asserts that acts preparatory for adultery are enough. And in the second paragraph after this decision is given he asserts that his opinion should be understood to be concerning immediate preparations, and he so explains his decision, where he says: "From the taking of the adulterer alone and naked with her alone and naked, and lying in the same bed, violent and certain suspicion of adultery arises, wherefrom the sentence of divorce may be granted."

But the laws adduced (at letters I & J) show that strong suspicion does not indeed suffice. For this sort of discovery is the true taking in the act of adultery. And from a civil case under the said letter, one argues weakly for proof in a criminal cause. [lxxviii] For no one can be condemned, much less killed, on suspicions alone in the absence of law. And violent suspicion is not indubitable ground for proof, such as is required in criminal cases. But indeed such suspicion is fallacious, because persons might be found to act thus for the purpose of committing adultery, and yet not actually to have committed the adultery, as Gravetta and others say.

The Accused might indeed have contended merely for the tempering of the penalty if he had killed his fugitive wife in the act of taking her at the inn of Castelnuovo ²²² in company with Canon Caponsacchi. But when he neglected to take vengeance with his own hand and preferred to take it by law, he could not then kill her after an interval. This is according to the text [Citation], which affirms that one can not put off vengeance from day to day. [Citations.] Farinacci asserts that it was so held in practice, lest men should be given the opportunity of avenging

their own wrongs. And he confutes Bertazzol, who places on the same footing a case of taking in adultery, and says that the wife may be convicted of it provided that there be no doubt of it. Nor may the suspicion of the husband, which gave a strong ground for the difference, be unjust or too ready. Because just grievance, exciting a wrath which usually disturbs the mind of the husband, is verified by the actual taking of the wife in adultery or in acts very near to it and not after an interval, although his suspicion may be very strong. And so the laws which excuse a husband because of just and sudden anger can not be extended to cover vengeance taken after an interval. For in the latter case neither the impetuosity nor the suddenness of the anger is proved, but the murder is said to be committed in cold blood. But if for the purpose of restraining the impetus of raging anger, lest the husband take vengeance on his own authority, he is not excused from the penalty of the *Lex Cornelia de Sicariis*, provided he kill his wife after an interval, how much less excusable will he be if after choosing the way of public vengeance by imprisoning his wife and her pretended lover he shall, after a long intervening time, slaughter her and her parents so brutally?

It should be added, for increasing his penalty,⁵⁰⁷ that as regards the unfortunate parents there was no just cause for killing them unless he wishes to consider as such the lawsuit²⁶⁰ which they brought for the nullification of the dowry contract because of the detection of her pretended birth. But this cause rather increases⁴²¹ the offense to the most atrocious crime of *lesa majestas*,⁴²⁰ because of the utter security which the Pontifical Majesty wishes to afford to all litigants in the City. This point is found in the well-known decree of Alexander VI where we read: "The inhumanity and savagery which thirsts for the death of others is horrible and detestable," and in the end we read: "In offense of the jurisdiction of his Divine Majesty, and to the injury of the Apostolic Authority." And, "They incur *ipso facto* the sentence of the crime of *lesa majestas*." And a little later: "And they may always be distrusted [lxxix] in all their good deeds by every one, and may be held as banditti and as infamous and unfit."

Very worthy of consideration, also, is that other aggravation of this inhuman slaughter, namely, that it was committed in their own home,⁴¹⁷ which ought to be for each person the safest of refuges, according to the text. [Citations.] And Cicero elegantly says: "What is more sacred, what is more guarded by all religious feeling, than the home of each of our Citizens! Here are our altars, here are our hearths, here are our household gods, and here the sacred ceremonies of our religion are contained. This refuge is so sacred to all that it would be base for anyone to be snatched hence." Much more is this true as regards the wretched wife, who was held in that place as a prison,⁴¹⁹ with the approval also of the Abate Franceschini.²⁸⁸ And hence the public safe-

keeping may be said to be violated thereby, and the majesty of the Prince wounded,⁴²⁰ since the same reasoning is observed as regards a true and formal prison, and a prison assigned by the Prince, as the following assert. [Citations.]

Finally we should also consider the aggravation of "prohibited arms,"⁴¹³ with which the crime was committed. This of itself demands the death penalty, even though the principal crime should otherwise be punished more mildly, as Sanfelici advises, stating that it was so adjudged. [Citation.]

GIOVANNI BATTISTA BOTTINI,
Advocate of the Fisc and of the Apostolic Chamber.

[lxxx]

[File-title of Pamphlet 6.]

*By the Most Illustrious and Most Reverend
Lord Governor in Criminal Cases:*

Roman Murder-case with qualifying circumstance.

For the Fisc, against

Count Guido Franceschini and his Associates.

*Memorial of the law in the case by the Advocate
of the Fisc.*

At Rome, in the type of the Reverend Apostolic Chamber, 1698.

[lxxxix]

SUMMARY.

[Pamphlet 7.]

My most Illustrious and Dearly Beloved Master:

No. 1.¹³⁸
Letter of the Honorable
Marzi-Medici, Governor of
Arezzo.

Your favored letter of the twenty-fourth of last month has reached me, and I am exceedingly sorry for the uneasiness in which you hint you are placed by the maledictions which Signor Pietro Comparini and his wife have disseminated¹⁰⁹ throughout Rome, concerning the ill-treatment they say they suffered in your home while staying in Arezzo. As your letter questions me for true information, I answer with all frankness, that both among the noble connection and in Count Guido's home they were treated with all respect and decorum. The cause of the first disturbance⁹⁵ which sprang up between them and your mother and brothers was that Signora Violante,⁹⁶ a few days after her arrival, presumed to domineer over the house and to keep the keys of everything, and in fact to turn out of house and home Signora Beatrice, your mother. With good reason, neither of the brothers was willing to consent thereto, and this gave occasion for the first insults and domestic broils. These afterwards increased when they saw that Signor Pietro⁹⁷ had given over the company and conversation of the best people of the city, and had struck up acquaintance with the most vulgar. And with them he began to frequent daily all the taverns there. This cast discredit upon him, and was little for the good name of the Franceschini. Of much greater scandal were the many¹⁴⁰ flights and petitions made by Guido's wife, their daughter, to Monsignor the Bishop.¹³⁹ These were made for no other reason than that neither she nor her parents wished to stay any longer in Arezzo, but desired to return to Rome. When she had been rebuked by that most prudent Prelate, he always sent her home in his carriage.¹⁴² It is true that ever since the Comparini left this City until the present time the Signora has conducted herself with much modesty and prudence. From this fact everyone infers that the poor child was led to such excesses by her parents, as she herself declares to everybody. Now she detests even the memory of them. Therefore, she is getting back into the good opinion of everyone, and especially of those ladies of the city who had ceased having anything to do with her. Finally these same Comparini had taken away all her jewelry from the Signora, which I forced¹³⁷ them to [lxxxii] restore. Altogether, such and so great are the scandals to which they have given rise before the whole city in the lapse of the few months they have stayed here, that I write you only a few of them. I assure you that with them your brothers have

had the patience of martyrs. Accordingly when I saw that they had become incorrigible, and were the talk of the town, and that they might force your brothers to commit some excess against them, for the maintenance of good discipline, I availed myself of the authority vested in me by His Serene Highness, and threatened ¹³⁷ them with prison and punishment unless they behaved themselves. After these threats, which they evidently merited and which might have overtaken them, they decided to go to Rome,¹⁰⁰ as they did a little later, leaving behind them in this city a very bad reputation.

As for the rest, there is now in your home an utter quietude, and the Signora lives with exemplary prudence, detesting the ill example she had shown the ladies of this city, and she confesses freely that it was so commanded by her parents. In my judgment, it is the hand of God that has freed your family from such turbid heads. This is all I can here put down, out of much else there is to say about it. Therefore rest at ease, and believe me that the discredit has been entirely their own. I need only sign myself, with all my heart, to your most illustrious self,

Your most devoted and obliged servant,

VINCENZO MARZI-MEDICI.¹³⁶

To Signor Abate Paolo Franceschini, Rome.

Arezzo, August 2, 1694.

No. 2.
Deposition of
Francesca.

I will tell your Excellency why I have fled from the home of my husband. Here in Rome, three years ago, I was married by my father and mother to the said Franceschini, and after I was engaged to him he stayed here in Rome for two months without consummating the marriage.⁸⁹ Then with my father and my mother I was taken by my husband to Arezzo,⁹⁴ because in the marriage contract ⁹³ it was agreed that my father and mother should go and live in Arezzo, as they did. After they had remained [lxxxiii] there four months,⁹⁸ they departed and returned to Rome,¹⁰⁰ because of the ill-treatment they suffered, at the hands not only of my husband, but of the others in his house.

I was left behind in Arezzo, and when about a year had passed after the consummation of the marriage, as I did not become pregnant,¹¹⁶ my husband and my mother-in-law Beatrice,⁴⁹ began to turn against me because I had no children. He said that because of me their house would die out and that he could not hope for an heir by me after a while; for by chance he had heard my father say that during a girlhood sickness certain seeds had been given to me as medicine, which possibly hindered me from having children. For that reason I came to be con-

tinually mistreated by my husband and mother-in-law,⁴⁹ though I answered that I was not to blame for that. Yet they continued always to threaten my life and, without any real occasion, they sought every pretext to maltreat me.

Then my husband began to be jealous¹²³ of me and forbade me to show my face at the window.¹²⁴ And to remove that occasion of jealousy I never showed my face save when it was absolutely necessary.¹²⁶ So one day, while we were on the balcony, he said to me that I was staying up there to make love, without telling me with whom. I replied that these were mere pretexts, and that from that place one could see only the street, without looking into the windows of the houses; for the balcony was only as high as our heads.

And then because the Canon Caponsacchi,¹²⁸ with other young men of the place, used to pass before our house¹⁵² and stop to talk with certain hussies,³² who were standing there in front, my husband began to fume with anger at me because the said Canon kept passing there as above,¹⁵¹ although I was not at all to blame. His suspicion increased all the more because, while we were in a great crowd at the play¹³¹ one evening, Canon Conti,³⁵ the brother of the husband of my sister-in-law, threw me some confetti. My husband, who was near me, took offense at it—not against Conti, but against Caponsacchi, who was sitting by the side of the said Conti. Then because Conti frequented our house, as a relative,³⁵ my husband took offense at him likewise; and this so much so that I, being aware of it, retired to my room¹²⁷ whenever he came to our house, that I might not have to take even more trouble; [lxxxiv]

but my husband was not thereby appeased, but said that I did this as a trick, and that his suspicions of me were not removed. He began anew to torment me so, on account of Caponsacchi, that I was reduced to desperation and did not know what to say. Then to remove that occasion for his ill-treatment, I spoke to the said Caponsacchi¹⁵⁶ one day as he was passing our house and begged him not to pass that way,¹²⁹ that he might relieve me from all the distress I suffered at the hands of my husband on that account. He replied that he did not know whence my husband had drawn such a suspicion, as he used to pass along there on other affairs, and that, in short, Guido could not stop his passing along the street.¹³⁰ And although he promised me not to pass along there, he continued to do so. But I did not show my face at the window. Yet with all this my husband was not appeased, but continued to maltreat me and to threaten my life, and he said that he wished to kill me.¹²⁵

At the time of the affair of the play told above, as soon as we had returned home, he pointed a pistol at my breast saying:¹³² “ Oh

A.
She tells of her husband's threats because of her ardor for her lover.

Christ! What hinders me from laying you out here? Let Caponsacchi look to it well, if you do not wish me to do so, and to kill you."

Furthermore, at the beginning of these troubles I went twice ¹⁴⁰ to Monsignor the Bishop,¹³⁹ because he might have remedied it in some way; but this did no good, because of his relation with the house of my husband. And so as I was a stranger in that city and did not know how to free myself from these perils and abuses, and as I feared that if Guido did not slay me with weapons he might poison ¹³³ me, I planned to run away and go back to Rome to my father and mother. But as I did not know how to accomplish this, I went about a month later to confession to an Augustinian Father,¹⁴⁴ whom they call Romano. I told him all my distresses, imploring him to write to my father in my name, as I do not know how to write, and to tell him that I was desperate, and that I must part from my husband and go to him in Rome. But I had no response.

B.
She lies asserting that she does not know how to write.

Therefore, not knowing to whom I might turn to accomplish my desire, and thinking that no one in the place would assist me, because of their relationship or friendship to my husband, I finally resolved to speak of it to the said Caponsacchi,¹⁴⁹ because I had heard said that he was a resolute man. Accordingly, as he was passing

C.
She confesses the strength and audacity of her lover.

D.
She confesses a conversation with her lover.

one day before our house, at a time when my husband was out of the city, I called him ¹⁷⁰ [lxxxv] and spoke to him from the stairs. I told him of the peril in which I found myself on his account, and begged him to bring me here to Rome, to my father and mother. He replied, however, that he did not wish to meddle at all in such an affair,¹⁸² as it would be thought ill of by the whole city, and all the more so as he was a friend of the house of my husband. But I implored him so much and told him it was the duty of a Christian ¹⁷⁹ to free from death a poor foreign woman. At last I induced him to promise me that he would accompany me as above. Then he told me he would secure the carriage, and when that had been arranged he would give me a signal by letting his handkerchief ¹⁸³ fall in passing before our house, as he had done before. But the next day went by,¹⁸¹ and although I stood at the blinds he did not give the signal. When the day following had also passed, I spoke to him again as above, and complained to him that he had broken the word he had given me.¹⁸¹

E.
She confesses a new conversation with her lover.

And he excused himself, saying that he had not found a carriage in Arezzo. I answered him that, at any rate, he should have procured one from outside, as he had promised to do. Then the last Sunday of the past month,¹⁸⁴ he went by our house again and made the signal with the handkerchief, as he had promised. And so I went

to bed with my husband that evening, and when I had assured myself that he was asleep¹⁸⁶ I arose from bed and clothed myself. I took some little things¹⁸⁹ of my own, a little box with many trifles inside, and some money, I know not how much there was, from the strong-box.¹⁹⁸ These were, moreover, my own, as is evident from the list of things and moneys made by the treasurer of Castelnuovo. Then I went downstairs at dawn,¹⁸⁸ where I found Caponsacchi, and we went together to the Porta San Spirito. Outside of it stood a carriage with two horses and a driver,¹⁹² and when we had both entered the carriage we journeyed toward Rome, traveling night and day¹⁹⁴

F.

The lie about the arrival at Castelnuovo.

G.

The lover is not a relative of her husband.

H.

New lies, that she did not receive letters from her lover, and that she does not know how to write.²³⁵

I.

Another lie, that she did not send letters to her lover.

K.

She does not know how to write, and her husband had traced the letter.⁴⁶⁶

without stopping until we reached Castelnuovo, except for them to take refreshment and to change the horses. We arrived at dawn,²¹² and were there overtaken by my husband as I have told heretofore to your Honor. The said Caponsacchi is not related in any degree to my husband, but was certainly a friend.

The said Caponsacchi, before the said affair, did not [lxxxvi] send me any letter,¹⁶⁰ because I do not know how to read manuscript, and do not know how to write.

Before the said affair, I did not at all send a letter of any sort to the said Caponsacchi.²⁵¹

When again put under oath, she responded: While I was in Arezzo, I wrote at the instance of my husband to Abate Franceschini, my brother-in-law here in Rome. But as I did not know how to write,²³⁵ my husband wrote the letter with a pencil and then made me trace it with a pen and ink it.¹¹⁴ And he told me that his brother had much pleasure in receiving such a letter of mine, which had been written with my own hand. And he did this two or three times.

If your Honor should cause me to see one of the letters written by me as above, and sent to Abate Franceschini, I should clearly recognize it.

And when it was shown, etc., she responded: "I have seen and carefully examined the letter shown me by the order of your Honor, which begins—*Carissimo Sig. Cognato, sono con questa*—and ends *Francesca Comparini ne Franceschini*, and having examined it, it seems to me, but I can not swear to it as the truth, that it is one of the letters written by me to Abate Franceschini, my brother-in-law, in conformity to my husband's wishes, etc.

And after a few intervening matters, etc., when questioned, etc., she replied: "I have never sent letters of any sort by the said Maria to anyone."¹⁵⁴

L.
Another lie about the arrival at the tavern of Castelnuovo.

M.
New lies that she did not lie down to sleep at the Inn of Castelnuovo.

In all truth, I arrived at Castelnuovo at the blush of dawn.²¹²

We shut ourselves in there at the tavern of Castelnuovo for the space of more than an hour.²¹⁵ During that time we stayed in a room upstairs.²¹⁶

And after a few other matters, when questioned, she replied: "I did not go to sleep, nor lie down to rest in the tavern at Castelnuovo during the time I stopped there, as above."

I know that your Honor tells me that the authorities pretend further that I slept all night in the abovesaid tavern of Castelnuovo in an upstairs room, in which Canon Caponsacchi also slept. And I say and respond that no one can truly say so, because I did not rest at all in the said tavern, and stopped there only for the time stated above.

[lxxxvii] [The letter of Pompilia to Abate Franceschini occurs also on page lvi, and is translated on p. 44.]

[lxxxviii] Outside to Abate Paolo Franceschini, Rome: but inside:

My very dear Sir and Brother:

No. 4.
A letter of Francesca written to Abate Franceschini.

I have received the fan which you sent, which has been most welcome to me. I accept it with pleasure and thank you for it. It displeases me that, without reason, my parents tear our house to tatters. I for my part am well and am happy in not having them now to stir me to evil. I wish well to all our house, in the sacred fear of God. In fact you may well laugh at the maledictions of my parents. Command me, who reverence you from the bottom of my heart. Arezzo, July 19, 1694,

Your deeply obliged servant and sister-in-law,

FRANCESCA COMPARINI FRANCESCHINI.

No. 5.³⁴
The examination of Canon Caponsacchi.

I had to go to Rome on my own business,¹⁵³ and as I told my secret to Giovanni Battista Conti,³⁵ a relative of Franceschini, who frequented the home of the latter, Francesca might have learned about it from the same Canon, although there was talk about town of my coming to Rome, which was to follow soon. Hence a letter,¹⁵⁴ sent to me by the said Francesca, was brought one day by a certain Maria,⁵⁴ then a servant

of the Franceschini. In it she told me that she had heard of my going to Rome and that, as her husband wished to kill her, she had resolved to go to Rome to her father; and not knowing with whom she might intrust herself, she asked me to do her the service of accompanying her as above. I answered her that I was unwilling to do anything of that kind,¹⁶⁰ or to expose myself to such a risk;¹⁶² and I sent her a reply by the same servant. I do not remember the precise time that she sent me the above letter. Thereafter, when I passed the house, she continued making the same request to me,¹⁶⁷ by flinging from time to time from the window a note that repeated the request. And I replied to her, sending the response by the same servant, and telling her that I did not care to involve myself in such affairs. And therefore she finally cast me another note from the window, which, as I learned, was seen by a working-woman living across the street, whose name I do not know, and she carried it to the husband. The same servant was then commissioned to tell me that there had been a great commotion in the house because of it, and that the sister of Guido, who had been married into the house of Conti,³⁵ had declared furthermore that that servant had carried the letter to me. She also told me that Guido said he was going to kill [lxxxix] his wife¹²⁵ in some way after a little while, and that he would also be avenged on me.¹⁶⁸ Accordingly, with this purpose, to free myself from every difficulty and danger, and also to save from death the said Francesca,¹⁸⁰ I resolved to leave for Rome and to accompany her thither, conducting her to her father. And so one evening—I do not remember the exact time—as I was passing their house I gave her a letter, which she drew up to the window with a string. In it I told her that to free her from death I would accompany her as above. Another evening she threw to me from the window a letter in which she renewed the above insistence, declaring to me that her husband was always threatening to kill her; she would therefore have to receive the favor of my company as above, of which I had spoken. And finally, the last Sunday of the past month of April,¹⁸⁴ while I was going by their house and she was standing at the window,¹⁷⁷ I told her that I had secured the carriage for early the following morning and that I would have it await her at the gate of San Clemente.¹⁹¹ Accordingly, at about one o'clock¹⁸⁷ in the morning, she came alone to the said gate. We entered the carriage and turned along outside of the city wall to go to the gate of San Spirito,¹⁹³ which is in the direction of Perugia. This carriage belonged to Agostino, tavern-keeper in Arezzo, and a driver, surnamed Venarino,²⁰⁵ the servant of the said Agostino, drove it. I had had him leave the city Sunday evening at the Ave Maria. Then we pursued our journey without stopping to spend the night anywhere,¹⁹⁴ and we paused only as it was necessary for refreshing ourselves and changing horses, until we reached Castelnuovo²¹⁰ on Tuesday evening, the last day of the said

order of your Honor. One [cf. p. xcvi] of them begins *Adorata mia Signora, vorrei sapere*, etc., and ends *mi ha detto il Conti*. Having well considered this letter, I declare that it was not written by me, though the handwriting of the same has some resemblance to my own.²⁴⁴ I have also seen the other letter [cf. p. xcvi], which begins *Amatissima mia Signora, Ricevo*, etc., and ends *questa mia*, and having well examined it I say that the same was not [xcvi] at all written by me, and is not in my handwriting.²⁴⁴ Furthermore, it has not the slightest resemblance to my handwriting.

I have never spoken in Arezzo to Signora Francesca, except when I spoke to her at the window,¹⁷⁷ as I said in my other examination.

I have never received other letters²⁴² from the said Signora Francesca concerning other matters than her flight to Rome, as I have said in my other examinations.

I marvel that the Fisc pretends that, before the flight, several other love letters²⁴³ had been sent to me by the said Signora Francesca;¹⁵⁷ for she was a modest young woman and such actions would be out of keeping with her station and her birth. And therefore I declare that the abovesaid pretense is false and without foundation.

I turn back to say to your Honor that in the prison²³¹ of Castelnuovo there was not found by the authorities anything whatsoever. And if your honor tells me that certain love letters were found, which the Fisc pretends are those sent me by Signora Francesca, I say and respond that it is not at all true.

Outside: To the Most Illustrious and Most Respected Signor Paolo Franceschini, Rome.

And inside:

My Most Illustrious and Respected Signor:

No. 6.¹⁴³
 Letter of the most
 Reverend Bishop of
 Arezzo.

I understand why you desire to tell me about the quarrels⁹⁵ which have arisen between Signor Guido, your brother, and Signor Comparini. And I can not but pity you for the trouble you have had in a case so rare, and indeed so unprecedented. The Signora, your sister-in-law, had some recourse to me,^{140 139} but her great excitement, taken along with the excessive passion of her mother, revealed to me that the daughter had taken this step entirely by mere instigation. So I tried to make peace between them, thinking that when the instigations of the parents were removed she might be brought to right reason. I believed

this the more readily, as she was of tender age. And the more she spoke, and the more she made outcry, that much the more had she been urged thereto by the instigation of her mother. And that she might not be excited even more, I had her taken home in my carriage twice.¹⁴² I have some knowledge of this because Signor Senator Marzi-Medici,¹³⁶ who presides over the laic government of this town for our Most Serene Grand Duke [xcii], has told me all. And I need only add that I reaffirm what I have written with entire sincerity. Wishing for new chances to serve you, I affirm myself

To you, Sir,

Your Most Obedient Servant,

THE RIGHT REVEREND BISHOP OF AREZZO.

Arezzo, September 15, 1694.

My dear Sir:

No. 7.²³²
Reciprocal love
letters.

I do not multiply my assertions for the purpose of proving my love to you, because my resolution and your desert is enough proof of it. My affection no longer has any rein, etc. May grace be to him who gives grace.

My own Signor:

I tell you, do not be surprised if my mother was at the window, because she was looking at the one who was setting the sofa in order. And therefore you can pass here without fear. When more at my leisure, I will write you some fine matters, etc. When they tell me anything, I will advise you of it.

My Adored Mirtillo,¹⁶² My own Life:

I pray you pardon me that I did not look at you yesterday when I was at the Cappucchini, because I saw that the two were watching to see if I would look at you. Therefore I suffered much pain in not being able to look at my Sun. But I saw mine own with my heart, in which I have you engraved. I remain as I am and shall be

Your devoted servant and faithful sweetheart,

AMARILLIS.¹⁶³

My well-beloved:

I have received your letter, which has given me much pain, etc., that the Jealous One²³⁹ might have seen the letters. And he did see them, but did not open them, because they were tied up together, and he

supposed that they were other letters, and did not take them into his hand. [xciii] This fellow is telling it because he would like you to get angry with me, etc. You ask me if I am of the same thought, and I tell you yes. If you have not changed, I am ready to do what I have told you, etc. Then soon, if they continue to drink red wine,²⁴⁰ I will tell you so. Whether you are of the same mind still, or have repented of it, I am content to do what you wish, etc. I remain as I have been

YOUR FAITHFUL SWEETHEART.

Most beloved Signor :

I do not know why you did not pass here yesterday evening; for I took my stand at the window and saw no one. I forsook the window because the Canon, my brother, was there. I left there to go to the other windows lest he might see me, etc. But you turned toward the door of your sweetheart, because there is the one adored by you. Conti has asked me for those octaves,²⁵³ which you gave me, etc. Therefore tell me if I must give them to him or still keep the precious verses for myself. And I remain as I am and shall be

Your faithful, yes, your most faithful Sweetheart,

AMARILLIS.¹⁶³

I forgot to tell you that the Signora my mother no longer has the fever, and is drinking wine, but by herself. Her wine, however, is red like ours.²⁴⁰ Therefore tell me what to do, that I may do it. I close with sending you a million kisses. But I know that in this way they are not so dear as a few would be if you would give them to me. But those of the Singer³³ are very dear to you, though I tell you that they are poisoned, etc. Be the scrupulous one with others that you have been with me. For you have reason for this with others, but you have no occasion for it with me, etc.

Most Cherished Narcissus :

This evening I received your letter, and it gives me great comfort to know that you are not angry, etc. I do not know when he will give it to me, but if he gives it to me I will give it to you. The Jealous One^{237 239} is away,¹⁵⁹ but I shall still be here, and all the rest; but because my mother has not found a servant, etc., they have said that they will stay here a while. Therefore you will not pass [?] out of my mind because of my not seeing you for a while. But whoever loves [xciv] from so good a heart as I do, will keep one in mind. I pray you pardon me if I make myself tedious by writing too often. Acknowledging myself as I am, I remain

YOUR DEVOTED SERVANT AND MOST FAITHFUL SWEETHEART.

Most beloved Signor :

If you could imagine with what haste I have written to you these two verses,²⁵³ etc. I met Signor Doctor, as usual. He asked me where I was going, and along the street he asked me why I had written scornfully to him. I told him that he deserved even worse, because he had given evil deeds and good words; for he had said he was fond of me and that he wished him and the rest of them in Sovara, etc. He replied it did not come from this one, but on account of another gentleman whom I used to like, who was more gallant than he. I answered him that if that one was not more gallant than himself, he was at least more faithful, etc. Professing myself, as I have ever been faithful, etc.

My Adored and Revered Signor :

I wish by this letter of mine to excuse myself from my error in sealing the letter which I sent to Rome, etc. I tell you that they have not found any letter at all of mine, because I do not let them lie around the house, but give them to the flames.²⁴⁶ And while I keep them, I place them in my bosom. This is not an excuse, why you should surmise [it to be] one of my letters; for I tell you that I give it place in my bosom, etc. Inasmuch as one of the family may be behind the curtain, as I believe, do not make any signal when you are under the windows. I shall be at the window this evening, or else at the blinds, and when I shall see you I will show myself at the window. But it is necessary to be prudent, that he may not see me. Because he has told me that if he sees me he will wish to do such things as not even Æneas, the Trojan, did. To avoid arousing his suspicion I will not stay there. But I pledge myself

YOUR MOST DEVOTED SERVANT.

My Longed-for Blessing :

If your saying that I do not love you, because you do not know me, is not an error, it is at least displeasing to me. Hear me, my dear: I am offended with you, because either you consider me blind or you do not consider me amiable. You can not say of a truth that I do not love you, nor can you say truly that any one does love as much as I love you. Look into my eyes, and you will be astonished; for when bright with my tears they will be faithful mirrors to reveal to you that your face is copied there (in which an outline of it is made in the Sun), that your whiteness is snow in comparison with the Milky Way, that the Graces have directed your movements by their own hand, that Venus in fashioning you took the measure of your limbs with her own girdle. Ah yes, I love you so much that in one respect I would wish alone to love you in the world, because it seems to me that I could love you for all in central

Latium. I should like that all might love you, because you would see that all of them put together can not love you as much as I alone do. My breast is envied by every other part of me, because it alone is able to love you. These are matters one can not know by mere hearing; they are matters to render one excusable to any one else who does not believe it. But you are a cruel beauty; for if you see a face composed by the miracles of angels you should not consider it a lie if a heart is found fashioned by the miracles of love, etc. I leave you a thousand thousand kisses.

My well-beloved:

I pass by compliments, because I can not match your very gallant verses,²⁵³ which are so far different from what I merit. You tell me that you wish to know what has happened in our house. I tell you that nothing has happened, so far as I can see, because none of them have said anything to me—none of them. But Signor Guido seems rather well disposed toward me than otherwise, and therefore I can not find out whether they are angry with me. Let my brother-in-law lock the door; he does it often, etc. If you do not wish to pass by here any more, I leave that to your own judgment, and I will suffer quietly the pains which are pleasing to you. Therefore I tell you that you may do as you wish. For as gold is refined in the fire [xcvi], so love is refined by suffering. I can well say that I shall suffer pain at not seeing you as I have been accustomed, etc. With a loving kiss, I remain as I have ever been, your most sincere sweetheart and your most faithful slave.

I had quite forgotten to tell you that I stay in the same room as at first, and that Thursday evening I went to bed at eight o'clock, and so you did not hear me enter the room. I told the servant that she should make the signals agreed upon, etc.

Signor Guido returns Saturday^{159 237} morning and you may pass this evening at ten o'clock or sooner, when you shall see the light in the room, etc.

My well-beloved:

I received your letter, which was most pleasing to me, as are all the rest you have sent me, etc. I see that you like the Pastor Fido. But I would wish you to imitate him, and I will imitate another Vienna. I hear from her that you will want to come to see me at the Villa, etc. If I could only bring it about, I would more willingly be your wife than your servant. You tell me that Conti is unwilling to bring any more letters for you. But let me inform you that I am wheedling him, and I have the wits to bring it about that he will carry them to you; because I say two kind words to him and he is charmed and will do what I

wish. You tell me that I shall let a cord down through the lattice, but you do not tell me what evening, etc. But I tell you that the Jealous One ²³⁹ has gone to Sovara, if I might speak to you. But the Confessor is utterly unwilling, and for that reason I do not have you come here, because now the street door is no longer opened, but you might be able to open the back door,¹⁵⁸ etc. But that Frate ⁵¹ does not wish it, and you do not. I thank you for the kisses you send me, but if you yourself could give them to me, I would hold them dear. And I give you others in reply, as many millions as you have given to me.

YOUR MOST FAITHFUL SWEETHEART.

I do not know what name to give myself, whether Vienna, or Amarillis or Dorinda, or Lilla, but I wish to call myself Ariadne, for I believe I have had to be such. I wish to call myself such, only so you are not a Theseus, but a chaste Joseph, or a dear Narcissus, or an Ilago, or a Fedone. Adonis indeed took pity on Venus, but I am none such, but even a Medusa. Therefore I deserve, etc. If you have read Tasso, you will know who this was, etc.

[xcvii] My Beloved Idol:¹⁶¹

I know of the affairs which have happened to you. I do not take it in bad part when you tell me that it is not possible to make my mother sleep, while she is ill and drinks no wine,²³⁸ and therefore can not sleep. It may be in the next few days that she will get well. Then I will inform you of it, etc.

Your faithful Sweetheart,
AMARILLIS.¹⁶³

My Adored, Beloved, and Revered Heart:

I am confused at such praise, etc. You write to me oftener than you might about the Doctor. You offend me by saying that I will love him again. I tell you as sure as the Sun shall rise upon this world, I have not the heart for another such blow. But he who does ill, thinks ill, etc. As to what you wish to know about the wine, I tell you that it is red ²⁴⁰ now, but I do not know how much longer it will be so, but I will let you know about it. Sending you a thousand and a thousand, and a million of kisses, I remain, etc.

Come this evening at seven o'clock,¹⁶⁵ because I wish to speak to you, and cough when you are under the window.

AMARILLIS.¹⁶³

She ¹⁶⁴ is bursting because she can not say, as you tell me here, that she is white as milk, and that you are darker ³⁰ than I.¹⁷ If I had been you,

I might have called you ivory, as I do call you. Watch this evening lest it be the Jealous One,²³⁹ and not myself. Therefore I will cough, and if you do not hear me cough, do not move.

I let you know that Signor Guido is going out of the city,¹⁶⁶ and will be gone several days. Therefore I pray you come this evening about seven o'clock.¹⁶⁵ And when you are under the window, cough and wait a little while, that I may not make a mistake. He goes away Monday morning, etc.

My Dearest and Most Deserving Well-beloved:

I give the infinite thanks of Rosalinda, etc. I wish you to know that he makes me signals along the Via del Poggio, etc., and not because I wish to make proof of your love, which I know very well. You are as constant as myself, and therefore I do not wish to make these proofs, etc. So that you can not say that I no longer love you, because all my good wishes for Signor Guido are turned to you, who deserve it.

AMARILLIS.

[xcviii] My adored Signora:

I wish to know whether you can leave Sunday evening, that is, to-morrow evening, for if you do not go away to-morrow evening, God knows when you shall be able to do so, because of the scarcity of carriages, owing to the fact that on Wednesday the
 Letter of the lover. Bishop¹⁷⁶ departs with three carriages. Therefore, if you can go, as soon as you have read this letter of mine, return to the window and throw it to me as a sign that I may reserve a carriage beforehand, which may be secured from some one or other. If I secure the carriage to-morrow, in passing along there I will let fall my handkerchief¹⁸⁸ one time only. Then for the rest, to-morrow evening I will wait from eight o'clock in the evening on as long as necessary. And as soon as you see that they are sound asleep, open the door for me, that I may help you make up your bundles and collect the money. Above all, try to put some into all their cups, and do not yourself drink it.²³⁸ And if by ill luck they shall find it out, and shall threaten you with death, open indeed the door, that I may die with you or free you from their hands. And praying God that he will make this design of ours turn out well, I declare myself as ever.

Your Most Faithful Servant and Lover

MIRTILLO.¹⁶²

It is a very bad sign that the Jealous One²³⁹ seems pacified, and that he has said that you were at the window. Because he will wish to find out in that way what you are doing at the window, and for what purpose

you are there. For Conti ³⁵ has told me that now he is more jealous than at first, and that if he finds out about anything he will wish to avenge himself by putting us to death. He wishes to do the same to me, and that is what will happen. Here then has come at last the breaking of the chord.

Most Beloved Signora :

I have received your note full of those expressions (and then loving words follow). Be pleased to receive me into your bosom, in which I rest all my affections, etc. Consign to the ashes this note of mine.²⁴⁶

My Revered Signor:

Driven by the affection which I feel for you, I am forced to contradict what I sent you yesterday evening in that letter when I said I did not wish to tell you to come here. If you did not tell me then, I tell you now that I would wish you to come here this [xcix] evening at the same hour as day before yesterday evening. I have indeed thought that towers are not moved by such light blows. But if you do [not?] wish to come here (that there may be no occasion for you to break your promise to some beloved lady or even though it may not be inconvenient), I do not wish to be the cause. Therefore if you wish to come here, pass along as soon as you have read this, etc.

No. 8.
Decree of ban-
ishment of the
lover.²⁷¹

TUESDAY, September 24, 1697.

Giuseppe Maria Caponsacchi,²⁶ of Arezzo, for complicity in flight and running away of Francesca Comparini, and for carnal knowledge of the same, has been banished for three years to Civita Vecchia.

[c]

[File-title of Pamphlet 7.]

*By the Most Illustrious and Most Reverend
Lord Governor of the City
in Criminal Cases:*

Roman Murder-case.

*For Count Guido Franceschini
and his Associates, Prisoners.*

Summary.

At Rome, in the type of the Reverend Apostolic Chamber, 1698.

[ci]

Romana Homicidiorum.

[Pamphlet 8.]

Most Illustrious and most Reverend Lord Governor:

The confession of Count Guido and his fellows as to the murder of Francesca, his wife, and of Pietro and Violante Comparini, his father-in-law and mother-in-law, falls far short of supporting the Fisc in demanding the ordinary death penalty. But, rather, it is remarkably in our favor in excluding that penalty. For there is no longer any doubt as to the cause of the murders, namely *causa honoris*. This at first was denied by the Fisc because of the presence of other causes, though these either were insufficient or were indirectly hurtful to the sense of honor. We will go over them hereafter, not "with unwashed hands." For a confession indeed should be received along with all its details, and is not to be divided according to a preconceived purpose. [Citations.]

This cause alone would be ground enough for demanding that he and his fellows be dealt with more mildly, if we bear in mind that *causa honoris* is quite sufficient for the moderating of this penalty. For we have proved in our other argument that a husband may kill his adulterous wife, even after an interval, without incurring the death penalty, wherever the adultery is really proved, as the Advocate of the Fisc concedes in his response. § *Solamque suspicionem*. [Cf. p. cxcvii.]

And in very truth, we have in our other plea adduced a great many decisions of the highest courts, wherefrom it is evident that the penalty has been diminished for husbands who have had their wives killed even by means of an assassin; and, on the contrary, no decision favorable to the Fisc is cited. Such an opinion is therefore to be accepted more readily, inasmuch as it is sanctioned by the greater number of authorities. And even although Farinacci and Raynaldus seem to take the other side, yet Farinacci, in his *Questions*, shows himself very much in doubt, as I have shown in my other plea; and in *cons. 141*, he shows that he is very changeable, since in *cons. 66, No. 5*, he has proved the contrary. Therefore, when his attention was called to this changeableness, in excusing himself, he asserted, in the said *cons. 141*, under *No. 16*, that Beatrice, in behalf of whom he had written [cii] in *cons. 66*, had been beheaded; as if this kind of rigorous sentence should be followed in practice. And may this distinguished authority pardon me,⁴⁹⁷ but he responds inconsistently,⁵¹⁷ having forgotten what he had written in the end of *cons. 66*: that is, that Beatrice was put to death not because she, after an interval, had commanded that one be put to death who was plotting against her honor, but because she did not

prove her right to this latter exception, where he says: "So also there was strong hope for the sister Beatrice, if she had proved the excuse she offered, as she did not prove it."

But the Honorable Raynaldus, whose words and writings I venerate, in his *Observationes Criminales*, cap. 2, § 4, No. 156, after he asserts that some remission from the ordinary penalty may be hoped through the benignity of the Prince, does not decide the point by citing Gizzarellus and Giurba, who affirm that in justice the penalty should be decreased. But he goes back to what he had written, cap. 7 in *Rubrica sub No. 60*, where, however, he does not openly examine the point as to murder permitted for honor's sake. Otherwise he would go contrary to the general opinion of authorities, and to many decisions of the highest magistrates, that is to the common practice of the courts. [Citation.] "And this opinion is followed in practice, as I find in the event of such a fact the Neapolitan court has so decided." And concerning this same practice, Matthæus likewise bears witness. [Citation.]

Yet, as I have said, it would be enough to clear Guido of conviction if only his confession be taken in its entirety without subdivision. For greater completeness, however, we offer full proofs of the adultery, as brought out in the prosecution for the flight from home. The Fisc has attempted to attack these proofs lest he might have to lay down his arms; and the Achilles of his pretense is solely a preposterous cross-examination,¹¹⁰ which was not admitted into the suit for permanent record. It gives the word of a certain baseborn woman, formerly a servant in the home of the Accused, who was severely maltreated by Guido, by the Canon his brother, and by their mother. All too eagerly she narrates the ill-treatment suffered by Pietro and Violante, and by Francesca their daughter, and his wife, respectively, especially in the matter of their food, on account of which Pietro and Violante preferred to return to Rome. [Cf. pp. xlix-liii.]

Yet Guido by a written agreement⁹³ had bound himself to furnish food to the abovesaid couple. And furthermore it is claimed that the flight of Pompilia also was necessary [ciii], because she was being threatened with death; in order that her own base desire of violating her matrimonial fidelity may not be deduced therefrom.

If, however, we have any regard for the truth, the domestic affairs of the Accused were not so pinched, because they were more than enough, not merely for frugal, but even for lavish living. The theft of the moneys²⁰⁰ committed by Francesca in the act of flight demonstrates this. (See the prosecution for flight, pages 5, 63, and 92.)

The real and true cause¹⁰⁰ which moved Pietro and his wife to go back to Rome was undoubtedly that the mother of Count Guido could not bear that the aforesaid Comparini should regulate family matters and should at their own pleasure dispose of everything looking toward

the government of the home;⁹⁶ this with greatest flagrancy and with none the less boldness they desired to do. Furthermore, Pietro took it ill that he was rebuked for leaving the company of the noble class and associating in taverns⁹⁷ with the commonest persons in town, to the scandal of well-born men. And still more because he was compelled by the Governor of the City, under fear of imprisonment, to restore certain trinkets and gems of his daughter,¹⁴⁷ which he had taken away, as Count Guido testified in his examination, pp. 96 and 97. And this is admirably proved by a letter of the same Governor recently presented by ourselves, which we give in Summary, No. 1. [Cf. pp. lxxxi-lxxxii.]

With these statements the cross-examination of the same Francesca, when arrested in her flight, agrees; in it we nowhere read that she was maltreated, nor that she ever complained of that home of decent poverty. And yet it is very probable that, to put a good face upon her flight, she would have alleged the domestic want and home miseries, if she had ever suffered them.

We do not deny that disputes immediately arose between Francesca and her husband, and possibly he threatened her with death. But this was for another reason, namely that she should quit the illicit amours¹²³ she had begun at the suggestion of her parents, and that she should live with evident chastity, as is to be read expressly in her deposition (our Summary, No. 2, letter A). [Cf. p. lxxxiv.]

It is verified from the fact that Francesca herself, in a letter¹¹² written to Abate Franceschini, ingenuously confesses (Summary of the Fisc, No. 4, and our Summary, No. 3) that her parents indeed were sowing strife between the couple and were urging her to have recourse to the Bishop¹³⁹ under the false pretense of ill-treatment; and day and night they kept instigating her to poison her husband, her brother, and mother-in-law, to burn the house [civ], and what is still more awful, to win a lover and return to Rome in his company. Nor did she fail to obey them in several of these matters.

And in another letter written to the same Abate, and shown by us, and given in our Summary, No. 4, we read: "Not now having those here who urge me to evil." [Cf. p. lxxxvii.]

Of no counter-effect is the response^{459 465} that the single characters of the said first letter had been previously marked out by Guido, and were afterward traced with a pen by herself,¹¹⁴ as she asserts in our Summary, No. 2, letter K. [Cf. p. lxxxvi.] For proof of this statement she can bring no other evidence than that she does not know how to write.²³⁵ Summary, No. 2, letters B, H, and K. [Cf. pp. lxxxiv-lxxxvi.]

In this, furthermore, she stands most clearly convicted of falsehood by her signature, which was recognized by herself at the command of the court while she was in prison, as we find in the prosecution for flight, p. 39. She also stands convicted of falsehood by the signature

of her marriage agreement, concerning the truth of which it would be ill to doubt, both because there is along with it the signature of one of the Lord Cardinals,⁵⁰ and because her handwriting was recognized by herself who had written it, at the demand of the notary, as is to be seen in the copy filed in the prosecution for flight, p. 132. And furthermore she is convicted by the priest with whom she fled, who asserts that more than once at night he has received letters which were either thrown out of the window by her or were sent by a servant; we give his deposition in our Summary No. 5, letters A, B, C, and D. [Cf. pp. lxxxviii-lxxxix.] This is verified by the Fiscal witness, p. 108, where we read: "And she threw down a note, as I saw very clearly, and the Canon picked it up, and went away." There are, besides, the letters²³² and sheets of paper filled with mutual love, found in the prison²³¹ at Castelnuovo, where they themselves were overtaken. But it is utterly impossible that the characters of these were also marked by her husband, nor is it told by whom they were written; accordingly it is to be presumed that they were devised by herself, lest she might betray their forbidden love-intrigues, which they would have to hide with the greatest care. And I pray that the abovesaid letter be submitted to our eyes, and it will be clearly seen whether the characters were formed by one not knowing how to write, but forming them in ink in imitation of certain signs, or rather by the expert hand of the woman herself.

In the first place, the truth of the said letter of which we are speaking, we may gather from the letter of the Governor of Arezzo, in our Summary, No. 1 [cf. pp. lxxxi-lxxxii], where we find: "Of much greater scandal were the flights and petitions made by the said wife, their daughter [cv], to Monsignor the Bishop. These were made for no other reason than that neither she nor her parents wished to stay any longer in Arezzo, but desired to return to Rome. When she had been rebuked by that most prudent Prelate, he always sent her home in his carriage."

And this is likewise expressly deducible from another letter¹⁴⁸ of the most reverend Bishop, which is given in the Summary, No. 6 [cf. p. xci], where we read: "The more she made outcry, that much the more she had been urged thereto by the instigation of her mother." And after a few words: "I have some knowledge of this, because Senator Marzi-Medici, who presides over the secular government of this city for our Most Serene Grand Duke, has told me all."

It is verified still further by another letter of Signor Bartholomeo Albergotti, produced by the other side, which is given in the Summary of that side, No. 2, at the end. [Cf. p. liv.] But the letter is not given in its entirety, for, where it speaks of the Secretary of the Bishop urging Count Guido and his mother, we should read there: "Not to maltreat the Signora for the affront offered him. After disputes enough

of this kind, he took the Signora back home. And she declared that she was absolutely unwilling to live with Signora Beatrice and with the Canon Girolamo, her brother-in-law." And after a few other matters: "I pray yourself and Signora Violante to be willing to offer a remedy by instilling the wife with a tranquil peace, which will be for the quiet of all," as we read in page 190.

This is also proved by the letter of the Abate produced on the other side, p. 182, where we read: "By Signor Guido, my brother, several offers have been made to him, but have not been accepted; and they insist that we force our mother and the Signor Canon to leave the house. But this shall never be, even if there do not follow both love and concord. I will never advise that."

And from the letter of D. Romano, 188, later, where we read [cf. p. liv]: "I have known why she fled to Monsignor, and it was because she did not wish to live with the Canon and Beatrice," etc., which words are not noted in the Summary of the Fisc, No. 2.

See for yourselves, therefore, that Francesca was not maltreated, although she so deserved because of her eager and indecent recourse¹³⁹ without cause to the most reverend Bishop. Hence it is evident whether the Comparini left Arezzo and Francesca fled from home because of ill-treatment.

It remains now that we see—even granting this ill-treatment—what cause of fleeing from the home of her [cvi] husband Francesca might have, or rather if her flight were not scandalous. This will not be difficult to make clear, if we will dwell for a little while upon the deposition of the same Francesca and upon the letters²³² found in the said prison of Castelnuovo. These latter were produced by the Fisc in the prosecution for flight, though they were not given recognition. The lack of this acceptance can not stand in our way, nor do I think it can be denied that they are of the same handwriting, if they are compared with the assured writing of the command of the court. Furthermore, as they contain love affairs, and the name of Guido himself, no sensible person will think that they were not written by them.

From her own deposition, it is evident that she was often abused for her sterility, and was terrified by threats of death on account of her love affairs with the said priest, as we see in the said Summary, No. 2, letter A. [Cf. p. lxxxiv.] Nor was the cautious husband deceived, since her love increased day by day, while her conjugal affection indeed decreased just as her feeling for her lover increased. In the said letters which are given in Summary, No. 7 [cf. pp. xcii-xcix], that priest is called: Beloved, Adored, Mirtillus, My Soul, Most Dearly Beloved, Narcissus, My Eagerly Craved Blessing, Dearest Idol; and she signs herself "Thy faithful Sweetheart," and "Amarillis." And conversely, she is called by her lover "My Adored Signora." And in the details of those letters

is expressed her intense love and the ardor with which that unfortunate one was burning for her lover, as is evident. Nor may I without shame refer to the very tender expressions of her love. But one of them, and possibly a second, I may not omit, that "from the claw, you may recognize the lion." Thus in letter 17, we read: "So that you can not say that I no longer love you; because all my good wishes for Signor Guido are turning toward you, who deserve it." And this possibly is the reason why she refused to lie with her husband, as the said letter of Signor Albergotti points out, where he says [cf. p. liv]: "The Signora has been melancholy, and two evenings after your departure she made a big disturbance, because she did not wish to go and sleep¹¹⁵ with Signor Guido, her husband, which displeases me very much."

In the first letter [we read]: "My affection no longer has any rein"; in the fourth: "I am ready to do what I have told you"; in the tenth: "I will suffer quietly the pains which are pleasing to you." And it would be a long task and a disgusting one, to tell them over singly. For she was unwilling to conform herself to the chaste manners of Arezzo, accustomed as she was to living a freer life. This may be read in the letter of Abate Franceschini produced by the other side, page 179, and following, where we read:

"These occasions for bitterness, which have arisen between yourselves and Signor Guido, I do not wish to examine. I know enough to say [cvii] that this has arisen from your wishing to turn the wife from what, according to the custom of the country, her husband both may and ought to do. Because over the wife God has given him authority, and likewise it is the general usage and the custom of the country. If yourself and Signor Pietro should stand in the way of this, you would do wrong, and it would be the duty of the husband to admonish his wife." And in another letter, p. 124, we read: "I can not persuade myself that my mother and brothers would conduct themselves in such a way as to force her to have such recourse." And after a few words we read: "And know well that what I have endeavored by my words to urge upon Signora Francesca, Signor Pietro, and yourself is only out of pure zeal for the honor of your house and of yourselves."

On the other hand, the same thing is to be drawn from the letter of the said priest, as we read in letter 20; "I have received your notes, full of those expressions [of love], etc. Be pleased to receive me into your bosom, in which I rest all my affections." And the letters which have reference to the flight, give clear proof of the mutual exchange of affection, as is well proved by the effect that followed. Thus, in letter 18, we read: "I wish to know whether you can leave Sunday evening, that is to-morrow evening; for if you do not go away to-morrow evening, God knows when you will go, because of the scarcity of carriages." And after a few intervening words: "As soon as you

see that they are sound asleep, open the door for me, so that I may help you make up your bundles and collect the money." And after a few more words: "Praying God that he will make this design of ours turn out well."

And letter 19 of the same lover, in which proofs of love are given by no means obscurely, also shows us of what quality those loves were, where we read: "That the Jealous One seems pacified, and that he has said you were at the window, is a very bad sign; because he will wish to find out in that way what you do at the window,¹⁷³ and for what purpose you are there. For [Conti] has told me that now he is more jealous than at first, and that if he finds out anything he will wish to avenge himself by putting you to death and will wish to find means to do the same to me."

It is proved still further that the wretched Accused complained bitterly that she was not content merely with a single lover at Arezzo, but that she has been defiled by many suitors,¹²³ so that she multiplied the disgraces to his house, page 98, and following. We also read clearly in the seventh letter:

"I met Signor Doctor, as usual. He asked me where I was going, and along the street he asked me why I had written scornfully to him. I told him that he deserved even worse, because he had given evil deeds and good words; for he had said he was fond of me, that he wished him and the rest of them 'in Sovara.'"

And in the thirteenth [cviii]:

"As to the Doctor, you offend me by saying that I will love him again. I tell you, as sure as the Sun shall rise, I have not the heart for another such blow."

It is therefore quite evident whether Francesca had an honest cause for leaving the home of her husband, or whether she was not rather impelled by the more urgent spurs of love. It may be said now that these letters were sent for a good purpose,²⁴⁷ that the priest might be induced to accompany her so that she might shun the danger of death, since she found herself therein without any just cause. And it may be said that she could have kept her modesty uninjured in the company of her lover. But since without doubt the amorous expressions used in the letters do not show chastity of mind and a modest disposition, and as just cause for flight is lacking, the veil wherewith her viciousness tried to hide itself is destroyed. I acknowledge that Judith,⁴²⁶ who was an entirely chaste widow, of decorous appearance and fine looking in many ways, made advances toward a very licentious enemy; but this was for the purpose of accomplishing a pious work, namely, to liberate her own native land. She was provided not with lascivious letters, but with earnest words, the unimpaired modesty of which it were evil to doubt, since she was moved by the breath of the Holy Spirit. But to-day,

how very few Judiths are found; yet the daughters of Lot are multiplied, who when they could not preserve their sense of shame even in their father's company made him drunken with wine, lest he, when sober, would deny them because they were sinning weakly, so that, when out of his own mind, he was involuntarily polluted with nefarious incest. (Genesis, chapter 29.) Do we believe that a girl who was dying for love, and who burned most ardently for the company of the loving Cupid and her lover, would keep safe her modesty during a long journey? Which modesty I only wish she had preserved in the home of her husband!

And even if Guido had imposed upon her, without due reason, a just fear of death, she should not therefore have increased his suspicion of base and lustful acquaintanceship by choosing as her companion in flight that priest whom her husband had suspected; for Caponsacchi was not at all related to herself or her husband, as each of them confesses in our Summary, No. 2, letter G [cf. p. lxxxv] and No. 5, letter E. [Cf. p. lxxxix.] Thus she would prove her dishonor. But while still guarding carefully her matronly shame, she might either have entered some monastery with the help of some church official, if she had used truth and not falsehoods; or she might have had recourse to the civil governor, who, after examining all things, would have afforded her a safe return to the City in company with honest men and women; or he might have placed her in the home of some honest matron [cix], with due safeguards. But even if she had no faith in either of these, and was determined to go back to Rome, she might at least have entered upon the journey with one of the servants.¹⁴⁸

Likewise, the other excuse for putting an honest face on the illicit amour falls to the ground—namely that concerning the aforesaid flight another priest,¹⁴⁵ the brother-in-law of the sister-in-law³⁵ of the said Francesca, was informed. For if the abovesaid letters are read through carefully, the suspicion of illicit correspondence with his connivance is very greatly increased. We read in letter 111:

“You tell me that [Conti] is unwilling to bring letters for you. But let me inform you that I am wheedling him; and I have the wits to bring it about that he will carry them for you. Because I say two kind words to him, and he is charmed and will do what I wish.”

And in letter 19 of the lover:

“For he has told me that now he is more jealous than at first, and that if he finds out about anything, he will wish to avenge himself.”

But who would judge that we can deduce from the said words that their mutual love was chaste, because another priest was aware of it. I know that for Francesca to show herself at the window at the hiss¹⁷³ of her lover in company with the other priest does not savor well. Of this a witness⁵⁴ for the Fisc, in the prosecution for flight, gives oath,

pp. 107-8. Therefore, not without cause did Count Guido have suspicion also of the other priest, as Francesca herself asserted in her deposition in our Summary, No. 2, before letter A. [Cf. p. lxxxiii.]

These [two] things are taken as proved therefore: [first] that it is not established that Francesca was threatened with death without just and legitimate cause, and [second] that a most suspicious correspondence with her lover is established. It will follow that the threats were offered by her husband to preserve his honor, and so it was in the power of Francesca to free herself from these threats without scandal, without flight, and without shame, by living chastely. She, however, was too prone to the tickling of the flesh, and had deferred all things to the fulfilling of her vicious desire, without respect to her violation of conjugal faith. It is all too foolish to doubt her utter recklessness, since it is manifestly evident from matters brought forward in the prosecution for flight, and especially from the reciprocal love between the lovers, etc. It is also clear from the letters containing such very tender expressions. [Citations.]

As to the entry and egress¹⁷⁰ of the said priest from the home of Francesca [cx] at a suspicious time, a witness^{54 171} for the prosecution testifies, p. 107: "At the sound of the Ave Maria, while I was at the same window, I saw the door of the said Signori Franceschini open very softly, and from it passed the said Signor, etc. He pulled the door to as he went out, but did not in fact close it, and therefrom, after a little while, I saw the said Signora Francesca Pompilia, with a light in her hand, who closed the said door." It is also proved from letter 11, where we read: "For that reason I do not have you come here, because now the street-door is no longer opened, but you might be able to open the back-door," etc. This of itself is enough to prove adultery, even when trial is being made to demand punishment therefor. [Citations.]

Her leaning from the window at a hiss,¹⁷² day and night, and their mutual nods, concerning which a witness⁵⁴ testifies, p. 108, are quite enough to prove carnal communication. [Citations.]

Then there is the manner in which they prepared for the flight, which includes, as I may say, a show of treachery, as is to be understood from the letter of the priest, No. 18, where [we read]: "Above all, try to put some into all their cups, but do not yourself drink it." For in seeking an opportunity to mingle an opiate¹⁰⁶ for them,²⁴¹ he was inquiring what colored wine they were drinking in the home, lest, as I suppose, the color of it when altered by the drug mixed therewith might betray their plots. So in letter 4, where we read: "Then further, if they continue to drink the red wine I will tell you so." In No. 12: "When you tell me that it is not possible to make my mother sleep, while she is ill, and drinks no wine." And in letter 13: "As to what you wish

to know about the wine, I tell you that it is red now, but I do not know how much longer it will be so; but I will let you know about it."

Still further this most wretched wife was moved with a burning ardor for the said priest, as is noted in letters 5 and 21; this is usually conceived by lovers only. Therefore, since it is undeniable that the carnal love¹⁵⁰ was reciprocal between them, I think it can not be doubted that her departure from the home of her husband and their association through a long journey prove their adultery. [Citations.]

In the progress of the journey kisses were given on both sides;²⁰⁰ of this the witness²⁰⁵ for the prosecution testifies; but I do not find in the evidence that he saw these at night [cxi], as is supposed by the other side; for page 100 asserts "I only saw that at times they kissed each other." And these kisses Francesca so strongly desired to give and to receive likewise, that in letter 11 [we read]: "I thank you for the kisses you send me; but if yourself could give them to me, I would hold them dear. I give you as many million more." And in letter 10: "And giving you an amorous kiss." And in 5: "I say good bye with a million kisses." And here and there in the other letters. These render the adultery not at all doubtful, so much so that there are not wanting authorities who assert that when the kiss is proved the adultery may be said to be proved. [Citations.]

Therefore, unless I am very much mistaken, no one who knew what we have recounted could be found so senseless and so weak-minded as not to believe strongly that when they were found in the inn her matronly shame had been tampered with, either during the journey or at night while they were taking their rest, or more probably in the morning while they were enjoying each other's society.

But passing over the fact that the priest was clothed in laic garb,²¹⁷ pp. 4 and 100, which affords no small weight for the proof of the adultery, all further doubts are removed, since they arrived together at the tavern of Castelnuovo at half-past seven at night,²¹¹ as three witnesses for the prosecution agree in swearing, pp. 44, 47, 49. And although two beds were in the chamber, only one indeed did the said priest wish to have made ready, and all night long,²¹⁵ behind closed doors, he rested alone with her (if lovers can rest); from this the adultery is proved without doubt. [Citations.]

This proof indeed becomes all the stronger from the lie of Francesca, who asserts that they arrived at the said tavern at dawn,²¹² Summary, No. 2, letters F and L. [Cf. pp. lxxv, lxxxvi.] For if no evil had been done she would not have attempted to hide the truth. [Citation.]

Finally the sentence or decree of this Tribunal,²⁷¹ which is given in Summary, No. 8 [cf. p. xcix], where the said priest is condemned for carnal knowledge of Francesca, removes all doubt; because the adultery is thereby rendered infamous, as was proved in our other argument.

And though it is asserted that it was in the minds of the Lords Judges [cxii] to modify this sentence and to add "for pretended carnal knowledge," yet it never was thus modified. And yet such modification would not have stood in the way after it had reached the ears of the luckless husband that the adultery of his wife had been made manifest and notorious and had been confirmed by the Judges' decree.

But certainly, even if we are cut off from this proof, their carnal communication remains more than sufficiently proved for our purpose; for we are arguing not for the infliction of the penalty of adultery, but we have deduced the adultery for exclusion of a penalty. [Citations.] For it is quite customary that, for a civil purpose, such as divorce or loss of dowry, adultery is abundantly proved by circumstantial evidence. [Citations.]

Nor is it of consequence that some of the stronger proofs are proved by single witnesses; for we are arguing to establish dishonesty and adultery in kind; not for the purpose of condemning the adulteress, but for the defense of the accused.

And the reason is very evident, because to excuse a husband from the murder of his adulterous wife after an interval, an exact proof of the adultery is not required, but strong suspicion of adultery is quite abundant, as Sanfelicius testifies it was decided, *dec. 337, num. 13*. But we are upon firmer grounds, because we not only have strong suspicions drawn from single witnesses, but other finely proved grounds, yes, the clearest of proofs, deduced by the Prosecution.

Very little does it stand in the way of this proof of her guilt that Francesca, when near to death,³⁶² tried to exculpate herself and her lover by asserting that there had been no sin between them;³⁶⁵ for this kind of exculpation, which is all too much a matter of pretense, might help her companion³⁶⁰ just as theretofore she had brought blame upon him; and by no other proof might his inculpation have been removed. This would indeed aid her fellow, but not herself. But since she stands convicted by the abovesaid proofs of having broken her matrimonial faith, it would be absurd that an exculpation [cxiii] made that she might seem to die an honest woman, should be of such efficiency as to destroy the proofs of her baseness. [Citations.] And what is more horrible, that from the said exculpation, her murderer might be the more severely punished.³⁶¹

I have faith, and this helps me to hope, that her soul rests in eternal safety, by divine aid, since she had time to hate her previous life. But no man of sense could praise her testamentary disposition, in which she appointed as her sole heir her son, who, as I hear, was but just born and hence innocent, and who had been hidden³⁶⁸ away from his father, and which appointed as residuary legatee a stranger joined by no bond of relationship.

From these considerations, therefore, it is plain that the adultery of Francesca is fully proved. Hence according to the opinion of the Fisc, her murder, even if committed after an interval, is not to be expiated by the death penalty; not only because of the justly conceived grievance, but because the injury to the honor always keeps its strength, according to the sentiment of Virgil in the *Æneid*, Book I: "Keeping an eternal wound within the breast."

It is of no force in response to this that he did not kill his wife and the adulterer, whom he had overtaken at the inn of Castelnuovo, but that he merely saw to their imprisonment;²²² as if that, after his recourse to the judge, he could not with his own hand avenge his honor.

For we deny in the face of all heaven that he could have killed either of them, because he was worn out by the rapid journey, and was so perturbed by the agitation of his mind, that he was seized by a fever. And furthermore he had heard that the said priest was armed²²¹ with firearms,⁴⁷⁰ as he asserted in the prosecution for flight, at a time when his word can not be suspected, because the murders had not yet been committed, pp. 76 and 77. It is also true that the priest was a terrible fellow,²⁹ according to the witness for the prosecution, p. 167, and as Francesca herself confesses. Elsewhere, the Accused speaks of the taking away of an arquebus⁴¹⁶ pointed at the officers, as he himself asserts, p. 71. And furthermore, Caponsacchi was all too prompt and too much disposed to resisting, as we read in letter 18. There, in speaking of the opiate to be given to the domestics, he adds: "If by ill luck, they shall find it out and shall threaten you with death, open the door, that I may die with you, or free you from their hands." And the wife, indeed [cxiv], was unterrified, full of threatening, angered, and even furious, as the outcome proved; since when captured by the posse of the Ecclesiastical Court, she dared, in the very presence of the officers and other witnesses, to rush upon her husband with drawn sword.²²⁷ And she would easily have killed him, if she had not been hindered, p. 50. He, indeed, weak, as he is, and of insufficient strength, could not have taken vengeance by killing both, or either of them, provided⁴⁷² as he was with only a traveler's sword.²⁰⁴ Hence, as he was not able to kill them, he saw to their imprisonment in the confusion of his mind, in order that he might prevent the continuation of his disgrace, and thus might hinder their future adultery.

But, indeed, even if he could have killed them, and did not do so, he would be praiseworthy; for up to that time the adultery had not been made notorious by the sentence of the judge, and only strong suspicions of it were urging him on.

But as for the recourse to the judge, whereby it can be claimed that he renounced the right to kill his adulterous wife, which we deny, I pray you note that the Tribunal acted prudently in placing Francesca in the

Monastery,²⁷⁶ that she might be kept more decently than in a prison. Then when it received the attestation of the physician as to her condition,²⁸³ lest she might be kept there destitute of necessary aids, and so might undergo punishment in the very course of events (which is everywhere avoided), after obtaining the consent of Abate Franceschini,²⁸⁸ brother of the Accused, the court permitted her to be placed in the home of her parents with the warning to keep that home as a prison.²⁸⁴

But I can not commend any one, whoever he may be, who tried to get Francesca from the Monastery under the false pretense of ill health, since he could legitimately and with more decency have succeeded in his intent by laying bare the truth, namely her pregnancy.²⁸⁸ But this was done for no other reasons than these: either that the son might be hidden away³⁰⁹ from Count Guido, since the law presumes that he was born of his legitimate father, although his wife had shown herself incontinent; or else Francesca, believing that the child was conceived of some one else, possibly was trying to hide from her husband the fact of her pregnancy.

And now in the meantime, let it please my Most Illustrious Lord to turn his eyes toward Arezzo and for a little while to think of Count Guido stained with infamy, when the decree of condemnation for adultery reached his ears. The adulteress was still unpunished, and he was ignorant of the fact that she could not be punished, owing to her supposed ill health, and that during her pregnancy, which she had so carefully hidden from him, she was unsuited to the vengeance of the sword. Furthermore, when he saw that [cxv] Francesca had gone back to that very suspicious home of Pietro and Violante, who had instilled Francesca with dishonesty, had repudiated her, and had professed that she was the daughter of a harlot,¹⁰⁵ he lost all patience, as is evident from the deposition of Blasius, p. 318, where we read: "But still further, she had been received back into the home, after she ran away from Guido, although the latter had put her in a Monastery." This change drove to desperation³⁰⁶ her luckless husband, who was at least an honorable man. Therefore his recourse to the judge ought not to increase the penalty for him.

We do not deny that Abate Franceschini had given consent²⁸⁸ to the removal of Francesca to the home of Pietro and Violante (in order that we may yield to our respect for my Lord Advocate of the Fisc), but only on verbal representation, for I have not been able to see it in writing. But, for our proposition, this does not affect Count Guido, since it is not made clear that he was informed of such consent, and thus far the Fisc merely presumes that he had been informed by Abate Franceschini, his brother, of this consent. [Citation.]

We are compelled to affirm that this knowledge is not to be presumed, as is shown below, or at the very worst there is present only presumptive

knowledge. And I do not think that on this kind of merely presumptive knowledge the death penalty can be demanded, nor can Count Guido be condemned, since he has neither confessed nor been convicted of such knowledge: chapter *nos in quemquam*, where we read: "We can not inflict sentence upon any one unless he is either convicted or has confessed of his own accord."

Indeed, what if Count Guido had acknowledged that he had written the consent furnished by the Abate, his brother, since it had no special authorization for that particular matter; nor a general authorization to conduct litigation, but only to receive moneys taken from himself by Francesca, as is to be seen, p. 136. By exceeding the limit of his power, Abate Paolo would have exasperated the mind of Guido; for the luckless man was already burning so with rage at the temerity of Francesca, Pietro, and Violante, that he was almost driven, I might say, to taking vengeance. He had put this off as long as he had any hope that he might have the marriage annulled because of mistake concerning the person married. For he was ignorant of the point of Canon Law that error as to the nature of the person contracted does not render a marriage null, but only an error as to the individual.²⁹⁸ [Citation.]

Nor does it amount to anything that Francesca, at the time she was killed, was under surety to keep the home as a prison, as if she were resting in the custody of the Prince.⁴¹⁹ For, however that may be, even if [cxvi] the Accused had killed Francesca to the offense of the Prince, yet since he wished to recover his honor and to remove with her blood the unjust stains upon his reputation, for this particular reason the aforesaid custody is not to be given attention, nor does it increase the crime; as in the more extreme case of one injuring a person having safe-conduct from the Prince, Farinacci affirms in making a distinction [Citation] where knowledge thereof is not to be presumed.

Furthermore, when we speak of custody we should understand it to apply to public custody and not to a private home as was proved in our other argument. Nor is the response enough that this would hold good in the one under custody, but not concerning the custodian, Violante; for I do not know any probable distinction between the two, since both cases may suffice for escaping the penalty; nor is any stronger reason to be found for the one than for the other. And indeed a third case would be more worthy of excuse, of one who broke this kind of custody, when knowledge thereof was not proved. Because such an offense might arise under such custody, just as one who had killed a person under bann, but ignorant of that bann, excused himself. [Citations.]

If therefore Count Guido is not to be punished for murder of his wife, for the same reason he can not be punished for the murder of Pietro and Violante,⁴⁰¹ because these murders were committed for the same cause, *causa honoris*. For at their instigation, Francesca found

her lover, and still more, in order that they might disgrace Guido, they did not blush to declare that Francesca had been conceived illegitimately, and had been born of a harlot.¹⁰⁵ This greatly blackens the honor of an entire house, as Gratian observes [Citation]; for the daughters of such are usually like their mothers.¹⁰⁶ Then also, as I have said above, the Accused burned with anger when he had notice of the return of Francesca to their home, p. 318, and the following. And Alexander proves this in his confession where he says, p. 646: "So that he had to kill his wife, his mother-in-law, and his father-in-law: because the said mother-in-law and father-in-law had a hand in making their daughter do evil, and had acted as ruffians to him." This following fact makes it all the clearer, because on the fatal evening when they were slain, at the knock on the door,³²¹ and as soon as Violante heard the much beloved name of the lover, straightway she opened it.³²³ And thus she showed, unless I am mistaken, what removes all doubt that Pietro and Violante were not at all offended with the love affairs of their daughter and her lover.

It is all one, because we are compelled to acknowledge either [first] that the Comparini had done new injury to his honor by receiving [cxvii] her into their home after they had declared that she was not their daughter, and after her adultery was clearly manifest, and hence there should be departure from the ordinary penalty. [Citation.] For just indignation, when once conceived, always oppresses the heart and urges one to take vengeance. [Citation.]

Or else [secondly] we must acknowledge a cause of just anger continued, and indeed was increased, which is quite enough foundation for asserting that the murders were committed incontinently. [Citations.]

Since, then, from the confession of Count Guido as well as from that of his associates, and since from so very many proofs brought forward in the trial it is evident that Guido was moved to kill them by his sense of injured honor, in vain does the Fisc pretend that for some other remote reason he committed the crimes. For, to tell the truth, I find no other cause which does not touch and wound the honor, if we only bear in mind what Guido has said in the trial, pp. 96 and 97: namely, that the Comparini had arranged the flight of Francesca and had plotted against his life. This alone would be enough to free him from the ordinary penalty. Bertazzolus and Grammaticus [Citation] testify that a man was punished more mildly who had had one who threatened him killed, though the threats were not clearly proved. [Citations.] "And the death which he had threatened fell upon himself, and what he planned he incurred," and also: "There is no doubt that one who had gone with the intention of inflicting death seems to have been slain justly."

Another cause of the murder alleged by the Fisc is the lawsuit⁴²¹ brought to annul the promise of dowry.²⁶⁰ Upon this point a complete and a very skilful examination was made by the other side, and because of this it was pretended that he had incurred the penalties of the Alexandrian Constitution and of the Banns.⁴²¹ But this pretense in fact soon vanishes. For if we look into it well we shall find, without difficulty, that a cause of this kind [cxviii] is no less offensive to the sense of honor. For the ground on which Pietro had attempted to free himself from the obligation to furnish the promised dowry was this solely: that Francesca was not his own daughter, but the child of an unknown father and of a harlot.¹⁰⁵ Every man, however, well knows whether this kind of a declaration would wound the reputation of a nobleman.

Whether or not a pretense of this kind could have found a place for itself before we had the confessions of Count Guido and his companions, as I have said above (for then the Fisc might have been in doubt how Guido could be moved to kill her), yet thereafter it was clear from the confessions of them all that the sense of injured honor had given him the impulse, and had even compelled him to the killing, as Count Guido asserts, p. 678, where we read: "To inflict wounds upon them, inasmuch as they had injured my honor, which is the chief thing." Vain is it to inquire whether he had killed them for some other reason, because, as it was clearly for honor's sake, the Fisc never could prove that they were killed on account of the lawsuit, and not on account of honor, as is required for the incurring of the penalty of the aforesaid Bull. [Citation.]

These statements are apt also as regards the murder of Francesca, who had sought a divorce.²⁶⁶ For if she had made pretense of being separated from him for any other reason, and if her dishonor were not perfectly clear, then indeed there might be room for the Alexandrian Constitution. But since wounded honor gave occasion for the murder, we are far beyond the conditions of the Alexandrian Constitution. Otherwise a very fine way would be found for wives to act the prostitute with impunity. For if it were possible, after adultery was admitted, to bring suit for divorce, they would find a safe refuge to escape the hands of justly angered husbands, and would be rendered safe by the protection of the said Bull even though the divorce was not obtained and though the husbands had been offended because of their dishonor.

But still less can such capital punishment be inflicted upon Guido on the pretext that he assembled armed men, contrary to the rule of the Apostolic Constitutions and Banns.⁴⁰⁹ For whenever the question is whether a husband may assemble men to kill his adulterous wife, we are still beyond the conditions of the Constitutions; for they have place whenever men are assembled for an indeterminate crime, and crime does

not follow; then indeed [cxix] the provisions of the Bull are applicable. But whenever men are joined together to commit crimes, and these actually follow,⁴¹¹ attention is directed to the end for which the men had been assembled, and the punishment for that is pronounced, nor is there any further inquiry concerning the beginning (that is, the assembling), as I have proved in my other argument. And I now add another citation [Citations] where, after the question was disputed, he asserts: "But certainly, notwithstanding what has been said above, in the current case, I do not believe there should be any departure from the decision of so many men, whom we may well believe have considered and written the entire matter with maturity and prudence for Our Most Sacred Lord Clement VIII." And at the end of this addition, it is testified that the Apostolic Chamber had so decided it at the order of the said Pope. [Citation.]

This is also proved by the Banns of my Most Illustrious Lord Governor, chapter 82, where they impose a penalty for assembling men for an evil end, if the evil end may not have followed. But they decide nothing when the crime for which the men had been assembled had been put into execution, because in this case the penalties for assembling cease and only the penalty for the crime committed is inflicted, as was said above.

And that the assembling of men for the purpose of recovering one's reputation does not fall under the penalties of the Apostolic Constitutions, see *Farinaccius cons. 65, No. 66*.

Finally the matter of carrying prohibited arms⁴¹³ is still left for consideration. Even if some authorities have asserted that this is not to be confounded with the principal crime, yet the contrary opinion is held by the majority; for the purpose is to be considered, which the delinquent chiefly had in mind. So Bartolo holds in our very circumstances. [Citations.] [cxx] And on the point that one killing for honor's sake, with prohibited arms, is still to be punished more mildly, Matthæus testifies that it has been so judged. [Citation.]

This also holds good in the more extreme case of several crimes, which can easily be committed separately and which tend toward different ends; yet, if they are committed at the same time and for the same end, the punishment only for the crime which was chiefly in mind is imposed. Thus, if one wishing to commit theft climb over the walls of the city,⁴¹² though he could commit that deed without the crime of crossing the wall (which is a very grave crime, according to *Farinaccius, quaest. 20, No. 146*), even then only a single penalty, namely that for theft, is inflicted, as the one chiefly in mind; and this is a little harsher than that for crossing the walls of the city, but is not of utmost severity. [Citations.]

Nor does it escape my notice that the Banns of our Most Illustrious Lord Governor, chapter 8, seem to settle the question by deciding that the punishment for carrying arms ought not to be confounded with punishment for the crime committed therewith. Nor do I fail to see, still further, that these Banns do not include one of the companions, who was a foreigner and not of that district. But since by common law these Banns receive a passive interpretation whenever arms are not borne for an ill end and then some crime is committed with them (because the delinquent did not have in mind the crime which he committed), he is punished for both crimes because at divers times he committed different crimes. But when any one bears prohibited arms with the purpose of murder, and then commits the murder, the chief crime of homicide, in view of which he bore the arms, is considered and the penalty of murder is inflicted, but not that for carrying the arms. [Citations.]

I beg you note that this crime in question is made important from the fact that those three who had no fear of ill, but who ought by all means to have feared, were slain, and not because of the kind of arms with which they were slain. The number of the victims, and not the instrument of their death excited astonishment, and it would have been the very same if they had been slain with the longest of [cxxi] swords, or with sticks, or with stones.⁴¹⁵ Therefore it would indeed be a very hard matter that the Fisc should be aflame over these murders, and not being able to demand the death penalty for them, should demand it for the carrying of arms.

But beside this, Count Guido denies expressly that he owned, carried, or kept arms of unlawful measure. And although it is asserted by the four associates that at the time of the murders Guido had in his hands a short knife,⁴¹⁴ and had given the same kind of arms to his companions, yet these could not doom him to the ordinary penalty. Thus Farinacci and others affirm after this matter has been well discussed and the contrary opinion confuted. [Citations.]

Nor does he deny that he had on his person a dagger⁴¹⁴ which was entirely lawful. But he did not have it with him at the murder, nor did he carry it for the murder, but only to defend himself if he should find in the aforesaid home outsiders ready to use force against him. And that was permissible to him; for there is ample right to bear arms of this kind throughout the Ecclesiastical State, and (I may boldly add) even in the very City. Because no mention is made of the City, although some places are excepted; according to that very true axiom: "The exception proves the rule in what is not excepted." [Citations.]

And he could the more readily believe that it was permissible for him to do so, because he had enemies in the city who threatened him there

and made plots against him, as Guido himself says; and therefore the bearing of arms of this kind was more necessary here than elsewhere.

Nor is it to the point that, because it is claimed he had killed with forethought, the privilege of bearing this kind of arms should not be granted him. For aside from what is said above and in the other argument establishing the fact that the aforesaid crimes were "for honor's sake," they can not be said to be committed "after an interval." The objection might hold good if he had used the arms in the murder, but as this is not established, it does not seem possible to deny him the right to carry the arms. In any case, although strictly speaking he could be said to have done the killing when armed with the said arms, yet he should not be punished with the extreme penalty of death. In *Caballus case 90, No. 7*: "Yet in fact in these cases I have never seen the death penalty follow, but by grace it is commuted to a milder penalty."

[cxxii] Finally he can not be said to have incurred the penalty for prohibited arms from the fact that he was present at the murders committed by his associates with such arms; because the penalty of this kind which is due to one furnishing the said arms does not extend to the helpers and assistants. [Citation.]

I do not speak of Domenico and Francesco, because these last two, as foreigners,⁴²³ are not bound by our Banns. But all matters fight for all of them and every single ground for the diminution of the punishment, which favors Count Guido, also favors them all; since accessories are not to be judged on different grounds from the principal, as I have shown in my other argument. There I cited, not the authority of one or another doctor singly, but the decisions of the highest magistrates. Clar also testifies that this opinion has been observed in actual practice. § *Homicidium, sub No. 51*.

But I earnestly beg⁵¹³ that my Most Illustrious Lord will be pleased to consider with kindly countenance and untroubled vision that Count Guido did the killing that his honor, which had been buried in infamy, might rise again. He killed his wife, who had been his shame, and her parents, who had set aside all truthfulness and had repudiated their daughter. Nor had they blushed to declare that she was born of a harlot, in order that he might be disgraced. They also perverted her mind, and not merely solicited, but even by the strength of her filial obligation compelled her to illicit amours. He killed her lest he might live longer in disgrace, loathed by his relatives, pointed out by the noble, abandoned by his friends, and laughed at by all. He killed her, indeed, in that City which in olden days had seen a noble matron wash away the stains of shame with her own blood—stains which against her will the son of a king had imposed upon her. And thus she expiated the violent fault of another by her own death. (See Valerius Maximus and Titus Livius.) This city also saw a father go entirely unpunished, and

even receive praise, who had stained his hands with the murder of his daughter, lest she might be dragged away to shame. [Citations.] So much did the fear of losing his honor weigh upon his heart, that he preferred to be deprived of his daughter rather than that she should continue to live in dishonor, even against her own wish. Count Guido did the killing in their own home, that the adulteress and her parents, who were aware of her crime, might find out that no place nor refuge whatsoever was safe from and impenetrable by one whose honor had been wounded. He killed them lest deeds of shame might be continued there, and that the home which had been witness of these disgraces might also be witness of their punishment. He killed them because [cxxxiii] in no other way could his reputation, which had been so enormously wounded, find healing. He killed them that he might afford wives an example that the sacred laws of marriage should be religiously kept. He killed them, finally, that either he might live honorably among men, or at least might fall the pitied victim of his own offended honor.

H. ARCANGELI, *Procurator of the Poor.*

[cxxxiv] [File-title of Pamphlet 8.]

*By the Most Illustrious and Most Reverend
Lord Governor of the City
in Criminal Cases:*

Roman Murder-case.

*For Count Guido Franceschini and his Associates,
Prisoners, against the Fisc.*

*New Memorial of the fact and law,
together with a summary,
by the Honorable Procurator of the Poor.*

At Rome, in the type of the Reverend Apostolic Chamber, 1698.

[Pamphlet 9.]

Most Illustrious and Most Reverend Lord:

The confessions of Count Guido Franceschini, and of Domenico Gambassini, Francesco Pasquini and Alessandro Baldeschi, his companions, are null; and therefore they should be given no consideration, as they issued under fear of the rigorous torment of the vigil,⁵²⁸ unjustly decreed against them. [Citations.] And this is true even though they still persevere in the same confessions. [Citation.] For as we have said in our past argument [cf. p. xxxv] (which may be reassumed here by favor), the Constitution of Paul V, of sacred memory, issued for the reformation of the tribunals of the City [Citation], commands that this torture be not inflicted except under two concurrent circumstances. One of these is that the accused be under the strongest of proofs, and the other that the crime be very atrocious. And the authorities alleged in my argument § *Quatenus*, etc. [cf. p. xxxv] testify that it has been so practiced.

Nor indeed can the asserted [discretionary] powers of this tribunal give support; because, whatever they may be, they have no place unless the crimes are punishable by death. Raynaldus [Citation] gives this reason: Whenever the defendant should not be condemned to death, he also should not, for the purpose of getting confession from him, be exposed to torture which might cause death, as it almost caused the death of Alessandro, who fainted dead away under two turns at the same torture.³⁹⁰

But the crime, which has been imputed to Count Guido and his helpers, and which they themselves have confessed, is murder neither of the first nor of the second degree, as was fully proved in my past argument. And indeed since Count Guido was moved to kill or to have killed both Francesca Pompilia, his wife, and Pietro and Violante, his parents-in-law, because of his sense of honor—namely, on account of the adultery which Francesca Pompilia committed with their conspiracy and aid, this fact relieves from the penalty of death, not merely himself (according to the texts and authorities alleged in my said argument), [Citations] [cxxxvi] but also his helpers (according to the authorities likewise alleged in said argument). [Citations.]

Gabriellus states: “And much less ought those to be punished with death, because if we will only examine the common opinion of wise men, just anger may excuse from a graver penalty than this; for according to the Gracchian law, Code concerning Adultery, even those who are called and led to the crime should likewise be excused.”

Aside from what may be claimed in this present state of the case, that the plea of injured honor is not established, the decree in condemnation²⁷¹ of the Canon Caponsacchi for the said adultery issued in this tribunal, September 24, last past, and given in full in our Summary, No. 8 [cf. p. xcix], makes the matter clear and manifest. [Citations.] For it is there said: "Giuseppe Maria Caponsacchi, of Arezzo, for complicity in the flight and running away of Francesca Comparini, and for carnal knowledge of the same, has been banished for three years to Civita Vecchia." Nor can these words be said to be merely the title of the case,²⁷⁴ which does not make any one guilty, as my Lord Advocate of the Fisc supposes; but the very decree and the title of the case, as seen by me in the original Process, was that which follows: *Arctii in Etruria fugæ a viro.*

But, in brief, the said Canon was condemned merely to the said punishment because he was a foreigner²⁷² and had committed his crime outside of this State; in such case he should be dismissed merely with exile. [Citation.]

Nor is it true that the Court receded from the said decree and still less that a modification of it was demanded. For we have no other fact than that for the purpose of giving some little indulgence to the still asserted honor of the wife and to the decorum of the said Canon, for which the Procurator of the Poor, their defender, kept sharply and [cxxxvii] incessantly urging, in the command for imprisonment, instead of the words of the said decree, these other words were applied: *Pro causa de qua in actis.* These words do not imply the correction of the preceding words, but indeed the virtual insertion of all the acts, and consequently of this same decree also. [Citations.]

And this is all the more true because the said decree could not be changed unless both sides were heard; which, as I remember, was the response given to the said Procurator when he insisted upon the said modification. [Citations.]

But why should I now insist on former matters when there is such conclusive proof of the adultery and further dishonor of the said wife from the many strong reasons deduced in the present stage of the case, and well weighed by my honorable colleague, the Procurator of the Poor, in his customary excellent manner? (I do not here repeat them, that I may avoid useless superfluity.) Hence there is left no room for doubt as to the outraged honor, which indeed impelled Count Guido to the commission of crime. For it would be quite enough that a cause of this kind be verified, even after one has committed the crime, as Bertazzolus advises on this point. [Citations.]

Still further, there is no need now to insist on past matters because Count Guido has stated the plea of injured honor not merely against his wife, but against his parents-in-law in his confession, especially page 98:

“ Thereupon followed her flight, which was so disgraceful, not merely to my house, which is noble, and would have been so to any house whatsoever, even if of low estate. She made this escape by night with Canon Caponsacchi and his companions. In the progress of her flight along with the driver of the carriage, she was seen by the said driver, kissing and embracing the abovesaid Canon.²⁰⁶ Still further, I have found out that they slept together at Foligno¹⁹⁵ in the posthouse and then again at Castelnuovo. By such proof, she stands convicted as an adulteress, not merely for this, but for other like excesses, which I have since heard that she committed in Arezzo with other persons.”¹²³ And page 672, where we read: “ And when the said Santi was asked whether he would give ear to offering an affront to the Comparini, because of my honor and the plots they [cxxviii] had made against my life, Alessandro responded that he would do it, and if some one else were necessary he would find him. Accordingly, after a few days, I received in my home Biagio, who has been twice named above, in company with the abovesaid Santi, and he said that he also would give ear to it, as being specially a question of my honor and the contrivance against my life.” And at page 678: “ And while we were staying in the same vineyard,³¹⁰ that is in the house within it, we spoke of various matters and particularly of what was to be done, namely of the affronts to be offered to the Comparini (that is to Pietro, Violante, and Francesca, my wife) and of wounding them because they had taken away my honor, which is the chief thing, and had also plotted against my life.” And at page 683, near the bottom, we read: “ And I would have so much to say that one might write from now till to-morrow morning, if I wished to tell all the trouble and expense I have suffered from the said Comparini. But all this would amount to nothing, if they had not touched my honor and plotted against my life.” And page 684: “ The Santi above-named was a laborer of mine at my villa of Vittiano,^{159 311} and consequently was informed of all these troubles I had suffered at the hands of the said Comparini. He also knew of the very indecent flight made by my wife in the manner elsewhere told. The abovesaid Alessandro then began of his own accord to seek me out and did find me, so that he might give ear, in the event that I should wish to avenge my honor and the plots which they had made against my life.” And page 699: “ And she together with Canon Caponsacchi was overtaken by myself at Castelnuovo, where they were arrested by the officers²²⁰ and conducted to these³⁴⁵ prisons.²⁵⁵ In the Court, many a time I exaggerated the excess of her supposed conception in order that they might be punished. I never having seen what would be considered expedient in an affair of such importance to my honor, have been obliged to take some resolution for recovering it, because the Comparini, with greatest infamy, had transferred to me their own ignominy.” And page 722:

“ And what I said to Alessandro, Biagio, and Domenico, I also said to Francesco once when he, knowing the offenses against my honor which I had suffered, asked me if I were ready to give a beating to my said wife. And I then replied to him that she deserved not merely a beating, but death.”

[cxxxix] Such a confession should be accepted with its own qualifications, for the Fisc can not divide and detach this from it (according to the usual theory). [Citations.]

This is undoubtedly true, when, as in the present case, one is arguing for the infliction of the ordinary penalty, whatever may be said, according to some authorities, for the infliction of an extraordinary penalty. [Citations.] Ludovicus extends this conclusion to all qualified confessions in any kind of crime.

This is true especially when the qualification is not merely propped up in some way, but is conclusively proved. [Citations.] For beside the said decree, and the other considerations above, we have his fellows in crime especially swearing that their services were required by Count Guido for committing crime in his very company for the abovesaid reason. Especially is this the case with Blasio Agostinelli, page 316: “ Signor Guido told me that his wife had fled from him in company of an Abate, and had carried away some money and jewelry.²⁰⁰ He led me into the very room where she had robbed him of the said jewelry and money, and told me that he wished to go to Rome to kill his wife, and that he wished that I and the said Alessandro would go with him,” etc. And page 317: “ At the above time the said Guido told me that his wife, for the purpose of fleeing securely with the said Abate, and that he might not perceive it, had mixed an opiate¹⁹⁶ in the wine for dinner to put himself and all the rest of them to sleep. [cxxx] He also said that he was in litigation with his father-in-law, who had not merely sworn that the said wife was not his own daughter, but still further had received her back into his home, after she had run away from her husband, although he would have put her in a monastery after he overtook her at Castelnuovo during the flight.” And Alessandro Baldeschi, page 623: “ The said Guido in the presence of myself, as well as that of Biagio, Francesco, and Domenico, told me that he ought to kill the lady, that is, his wife, who was here in Rome, to recover his own honor; and also to kill the father and mother of the said wife because they had lent her a hand in the insult she had offered to his honor.” And page 645: “ He told us also, in the presence of the keeper of the vineyard,²¹⁰ that he was obliged to kill his wife, his father-in-law, and his mother-in-law, because the latter had lent a hand to their daughter in her ill-doing, and had acted the ruffians too, and because the said Guido also declared that these same people, whom he had to kill, had wished to have himself, that is Guido, killed.”

Nor can the plea of injured honor be excluded by the attestations³⁵³ of those who afforded assistance to Francesca Pompilia even up to the time of her death: for they attest that she made declaration that she had never violated her conjugal faith.³⁵⁵ These assertions are merely testimony given outside of a trial, and do not demand belief. [Citations.]

And more especially as they were extorted and begged³⁵³ (while the suit was pending and the other side was not summoned) by the heir of the same Francesca Pompilia, for avoiding the prosecution by the Monastery of the Convertites,³⁶⁴ which was laying claim to the succession to her property on account of her dishonesty. Such shame would cause all of her hereditary property to be sequestered and judicially assigned to the said Monastery by law. [Citations.]

And this objection to their testimony is especially true because some of the witnesses who swear as above are beneficiaries of the same Francesca Pompilia, so that they might be swearing for their own advantage. For if her dishonor were substantiated, her property would devolve upon the said Monastery, and consequently they would be shut out of their legacies. [Citations.]

And however far these attestations may occasion belief, a declaration of this kind serves to no purpose, because no one is presumed to be willing to reveal his own [cxxxii] baseness. [Citations.] So likewise Francesca Pompilia should not be believed, especially when testifying outside of a court and without oath. [Citations.] Much less are the aforesaid witnesses to be believed, lest more credence be given to hearsay evidence than to its original. [Citations.]

Nor can it be said that no one is presumed to be unmindful of his eternal safety;³⁶² for all are not presumed to be Saint John the Baptist. [Citation.] Especially when the argument is concerning the prejudice of the third.³⁶⁴ [Citation.] And still more so when the argument is for punishing more gravely the enemy of the declarant. [Citations.]

And therefore, as the plea of injured honor is substantiated, it makes no further difference that the said murders were committed after an interval, according to what we have very fully affirmed in our last argument, § *nec verum est* [cf. p. xxvi], even down to § *prædictis nullatenus*. [Cf. p. xxxii.] There it was shown that this is the general opinion of authorities, and in accordance therewith judgment has been given from time to time not only in the Sacred Courts, but also in all the other tribunals of the world, as Matthæus well observes, etc. [Citation.]

Nor can there be any departure from this opinion in the present case on the ground that Count Guido did not kill²²² his wife in the act of seizing her in her flight with her lover, but was indeed content to carry her before the judge as an adulteress. For it would not have been safe for him to kill her then; because he was alone and she was in company of

the said lover, a daring young fellow, strong,²⁹ and well armed, and accustomed to sinning. And what is more, this lover was prompt and well prepared to make resistance, lest his beloved Amarillis¹⁶³ should be snatched from him. Likewise she was prompt and ready to hinder her husband even with a sword [cxxxii] she had seized and drawn,²²⁷ lest her beloved Mirtillo¹⁶² might be offended. Guido should not therefore be considered to have spared her nor to have remitted his injury. But lest she might escape into more distant parts where he could have no hope of the due vengeance, his just and sudden anger then counseled him to have her arrested by officers,²²² so that he might kill her as soon as possible; and when afterward a suitable occasion arose, if he killed her, it should be considered as if he had slain her immediately. [Citations.]

And, generally, whatever is done after an interval may be said to be done incontinently, if done as soon as a chance for doing it was given. [Citations.]

But so far is the Law from believing that this kind of injury is remitted by a husband that it rather believes that the spirit of vengeance always continues in him. Therefore it comes about that a wife may be held responsible for looking out for herself; so much so, indeed, that her death which follows thereupon may never be said to be treacherous. [Citations.] Muta speaks of the case of a husband who had his wife summoned outside of the city walls by his son, in order that he might kill her safely, and yet the husband was condemned only to the oars for seven years.³⁹⁵

[cxxxiii] This also makes some difference in the case, that certain authorities hold that a husband may indeed hide his wife's baseness for the purpose of taking vengeance upon her safely later on. [Citations.] Likewise he may have his wife hide his disgrace for the purpose of taking vengeance securely upon the one who wishes to offend her modesty, according to the very famous council of *Castro 277, lib. 2.*

And this is all the more to the point because Count Guido was censured by the Procurator of the Poor himself, the defender of Francesca and Canon Caponsacchi, for this appeal to the judge. [Citations.] We have alleged many of these authorities in our past argument, § *et hac nostra* [cf. p. xxxi]: for they unanimously assert⁴⁸⁶ that husbands are considered vile and horned, if they do not take vengeance with their own hands, but wait for that to be done by the judges, who themselves ridicule and laugh at them. Therefore it is no wonder if the luckless husband, after he had made the said recourse to the judge, as the foolish heat of his wrath suggested to him, wished to avenge himself for his lost honor. For he sinned that he might shun the censure of the vulgar and learned alike,⁴⁸⁷ and that he might not add this infamy also to his lost honor.

Nor is it at all to the point that the said Count Guido, in his confession in one place, beside speaking of his injured honor, also mentions the plots aimed at his life; because the force of honor was far the stronger in his mind, as he himself asserts, page 678: "In consideration of the fact that they had taken away my honor, which is the principal thing." Nor ought any consideration be given the other cause; because, as it is so much weaker, it should be made to give way to the aforesaid reason, as was proved in our former argument, § *Et in omnem Casum* [cf. p. xxxiv], where for another purpose we have adduced Matthæus [Citation], who is speaking in these very terms.

And so far as we desire to give attention to this other cause, it likewise is sufficient for escaping the ordinary penalty. [Citations.] [cxxxiv]

The Fisc acknowledges the relevance of the abovesaid matters; he therefore has recourse to the circumstances attending the crime, namely, the assembling of armed men,⁴⁰⁹ the lawsuit⁴²¹ going on between Count Guido and the Comparini, the prohibited arms,⁴¹³ and finally the place where the crime was committed.⁴¹⁹ For Francesca Pompilia was detained in the home where she was killed, as a prison. But a response is easy because such circumstances can indeed somewhat increase the penalty of the principal in the crime, but not so much as to raise it to the highest degree, in such a way that Count Guido and his associates should come to be punished with death. For we find it decided in these circumstances as quoted by Muta [Citation]: "A decision was therefore made in view of the case in general, March, 1617, before his Excellency,¹⁴⁰ wherefrom the ill manner of killing her⁴⁸⁸ was evident; for he had her summoned by her son, and afterward her body was discovered, which the dogs had eaten outside of the walls. Leonardus³⁹⁵ was therefore condemned to the royal galleys for seven years." And Sanfelici [Citation] says: "And although some of them were condemned to banishment, it was because of their mutilation of the privates, a crime for which the Fisc claimed they ought to be punished by the penalty of the *Lex Cornelia de Sicariis*."

And Matthæus³⁹⁶ [Citation] says:

"When the matter had been more carefully considered in the Council, it was decided that the husband had proceeded too treacherously⁴⁸⁹ in pretending absence, in taking his brother with him, and in killing with prohibited arms; because merely by the use of firearms a crime is rendered insidious with us, etc. And it was accordingly decided that, because of this excess, he should be condemned to the penalty of exile for four years and to the payment of 2,000 ducats." And this at the stage of appeal was confirmed [Citation] where we read: "And thus it was decided in the face of the facts proposed in condemning Francesco [cxxxv] Palomi to the penalty of the galleys for ten years, etc.,

from the aggravating qualification of firearms. To the same penalty, Antonio Alvarez was condemned, who had deliberately killed his wife because she was playing him false, etc. The penalty was increased because he was judged to have omitted this earlier, since he did not complain of mere adultery, but of her living as a strumpet. And she could not do this without the indifference and connivance of the husband."

And our reasoning is manifest, because it can not be denied that Count Guido and his associates committed all the aforesaid crimes on the same ground of injured honor. Because just as this excuse should be considered sufficient for escaping the ordinary penalty for murder, so likewise it should be considered sufficient for avoiding the other punishments whatsoever, appointed in the Apostolic Constitutions against those committing other crimes expressed in the same; as the principal purpose of the delinquent is always to be attended. [Citation.]

So it was declared on this point for the purpose of avoiding the penalty inflicted in the 75th Constitution of Sixtus V [Citation] against those who assembled armed men, whenever these men were evidently assembled for the purpose of committing some other crime, such as breaking prison and freeing those detained therein. And three very celebrated students of the Sacred Law, namely Coccini, Blanchetti, and Orani so decided. Their decision is included among others gathered by Farinacci [Citation], and he testifies that it was so decided in the full chamber, in which the case was proposed and examined at the order of Clement VIII, of sacred memory.

Nor does what he wrote later on to the contrary in aid of the Fisc, of which he was then Advocate, stand in refutation; Spada. [Citation.] For this opinion of his was refuted clearly and rejected on the most substantial of reasons and arguments. [Citations.]

And in such conditions, for the purpose of avoiding the penalty of the Banns [cxxxvi] or Apostolic Constitutions prohibiting the carrying of arms, I have alleged many authorities in my past argument, § *neque plures* [neque vero] [cf. p. xxxix] and above the rest, Policardus, etc. [Citation], who fully examines the matter. My honorable Procurator of the Poor gathers together others in his present argument, § *remanet tandem*. [Cf. p. cxix.] To these I add, Caballus [Citations], where it says that preparatory acts are to be included with what was prepared, and he testifies that it was so decided by the Sacred Council of Naples.

Likewise, for the purpose of avoiding the penalty set for those killing one detained in prison,⁴¹⁹ and so remaining in the custody of the Prince, I have cited many authorities in my past argument, § *similiter nec aggravari*. [Cf. p. xxxiv.] To these I now add. [Citations.]

Nor does it make any difference that Policardus, in the place cited, and some of the other authorities recently alleged speak of homicide committed in a quarrel or for self-defense. For the attendant circum-

stance of a quarrel relieves one committing crime from the ordinary penalty of the crime only in so far as it overlooks the crime in one who, when provoked, wished to be avenged (as Ulpian says), and insomuch as one swept away by a just indignation is not in the fullness of his intellect.⁴⁹⁴ [Citation.]

But both of these reasons without doubt stand in favor of the husband or of any one else committing murder for honor's sake [Citation], even if they do so after an interval. [Citations.]

And in these very conditions, one killing an adulterous wife after an interval is excused because of just anger, which causes him not to be in the fullness of his intellect,⁴⁹⁴ etc. [Citations.] [cxxxvii]

Ulpian [Citation] also says: "He ought to be angered with a wife who has violated his marriage with her, and his wrath should spring from indignation for contumely when received, and his nature should arise so that he would drive her from himself in whatever manner he could." "For it is more difficult to restrain one's anger than to perform miracles,"⁴⁷⁷ as St. Gregory says. [Citation.]

The other authorities, indeed, who speak of persons committing murder in self-defense with prohibited arms or in prisons should likewise be in our favor. For the defense of honor in the case of men of good birth, especially of nobles, is to be likened to the defense of life itself. [Citations.] And indeed it surpasses life, according to the words of the Apostle³⁸³ in his first letter to the Corinthians, chapter 9: "Better⁴⁸⁸ were it for me to die than that anyone should deprive me of my glory." And St. Ambrose:³⁹⁴ "For who does not consider an injury to the body, or the loss of patrimony, less than injury to the spirit or the loss of reputation?" And the third Philippic of Cicero: "We are born to honor and liberty; either let us keep them, or die with honor." [Citations.]

So that he who spurns his own honor,⁴⁷⁴ and does not see to regaining it by vengeance, differs naught from the beasts. [Citations.] Indeed he should be considered even more irrational than the very beasts, according to the golden words of Theodoric,³⁸⁴ as quoted by Cassiodorus, which we have cited in our past argument § *Nec verum est*. [Cf. p. xxvi.] [Citations.]

Then as to the lawsuit⁴²¹ going on between Count Guido and the Comparini as regards the fraud about the birth, beside what was said recently [cxxxviii], I pray that it again be noticed that the Constitution of Alexander does not enter where some provocation has arisen from the one injured, as Farinacci well affirms [Citation] in following a decision of the Rota, which he places at the end of his counsel. And we have weighed this heretofore in our past argument § *absque eo quod*. [Cf. p. xxxiii.] Such provocation in the present case resulted from the

injury which the said Comparini inflicted upon this same Count Guido while the lawsuit was pending, because of their complicity in the said flight and adultery committed by their daughter on that occasion.

The other lawsuit which Francesca Pompilia made pretense of bringing against Count Guido, for divorce,²⁶⁶ might be omitted. For beside the considerations offered by my honored Procurator of the Poor in his present argument, § *quæ etiam aptantur* [cf. p. cxviii], this suit was brought illegally, because the warning of it, as I suppose, had reached only Abate Paolo, the brother of Count Guido, who had no authority in this matter. And this is true especially because it is not proved that the same Guido had any knowledge of that suit brought, as is now pretended.

As to Blasio Agostinelli enough has been written in the former argument, since he has not been examined anew,³¹⁵ and in his former examination he confessed only that he was present at the said murders, but that he had no hand in them. So the more rigorous opinion of Caballus can not apply to him, who said that such helpers are not immune from the penalty of murder whenever they kill anyone with their own hands. For the opinion of this author was proved by us to be erroneous, in our past argument, § *quidquid in contrarium*. [Cf. p. xxxviii.]

I might wish to add something to what has been said in the past argument as to the alienage and minority⁴²³ of Domenico and Francesco; but it is not yet very clear under what law the Fisc pretends that they miss these. Therefore I will rest satisfied with this response, believing certainly that it will not chance that my Lord Advocate of the Fisc may fashion his own allegations and also respond to ours without communicating them to me, as happened in the past argument very greatly to the astonishment of myself and of others. For he and I both ought to seek the truth and to be advocates of that, as both of us are officers³⁷⁶ of the Prince [cxxxix] according to the considerations of Raynaldus. [Citation.] Who indeed desires that anything else than justice be administered, and especially when dealing with poor imprisoned wretches?⁵⁰⁸ In their cause, piety should triumph, because they are the treasure of Christ. [Citation.]

DESIDERIO SPRETI, *Advocate of the Poor.*

[cx1]

[File-title of Pamphlet 9.]

*By the Most Illustrious and Most Reverend
Lord Governor of the City
in Criminal Cases:*

Roman Murder-case.

*For Count Guido Franceschini and his Associates,
Prisoners, against the Fisc.*

*New Memorial of law,
by the Advocate of the Poor.*

At Rome, in the type of the Reverend Apostolic Chamber, 1698.

[cxli] An Account of the Facts and Grounds of the Franceschini Case.⁵⁵

[Pamphlet 10.]

The property⁶³ of Pietro Comparini did not amount to more than the sum of 10,000 or 12,000 scudi,⁶⁷ subject to a reversionary interest^{68 69} coupled likewise with the obligation to compound a good percentage of the income.⁷⁰ He therefore had to live sparingly to avoid being reduced to a state of destitution, there being a bar against his use of the capital and of a part of the income. He was also too indulgent to his stomach and was given to laziness,⁷¹ and furthermore had taken a wife with a very small dowry. Then lawsuits came upon him, the income of his bonds⁵³³ was reduced, and other misfortunes befell him, so that he was brought down to a state poor and miserable enough.⁷² So much so that he was several times arrested for debt and, after making a statement of his property, received from the Papal Palace secret alms each month.⁷³

When he found himself in such straits, he⁷⁴ decided to marry off Francesca Pompilia, his daughter, to some person who would undertake the burden of supporting him together with his wife, Violante Peruzzi,⁶⁵ who was a very shrewd woman and of great loquacity. It was with her advice that he had undertaken the affair, and the marriage with Count Guido Franceschini was considered suitable. For when the latter had conducted his new wife and her parents back to Arezzo, his own country, he might be able to find some opportune remedy for their necessities, by the assistance in Rome of Abate Paolo Franceschini his brother, an active and diligent man;⁵⁰ thereby putting in order the patrimony⁹⁰ of Pietro, which had been sequestered and tied up by his creditors. Therefore, when the dowry had been set at twenty-six bonds,⁹¹ with added hope of future succession to the rest of his property by virtue of the reversionary interest⁶⁹ to which the wife was entitled, the bargain was accepted. This bargain was advantageous to Pietro and his wife in freeing them from the straits in which they found themselves.⁷⁷ And it was likewise advantageous to the Franceschini, as the diligence of the Abate, and some temporary expenditure by their house well attests. For they might well believe that they would gain in time the aforesaid property either entire, or little decreased.⁹²

[cxlii] Such from the beginning were the mutual purposes of that unhappy marriage. From this fact one may see how slight a pretext there is for saying that Count Guido, while making the arrangements, had tricked Pietro and his wife by giving an inventory of property with

an annual income of 1,700 scudi,⁹² which income was later proved to be much less. Because the primary end for which the marriage was concluded might very well have been obtained by showing a much smaller income. For it is known that when this inventory was shown by Violante to Pietro Comparini, he said on seeing it: "Ho, ho, it would have been enough for me if it had been only half as much." And indeed it would have been the greatest stupidity in Pietro to have given his daughter a husband, upon the simple inventory of a foreigner and without finding out if this were true so that the real impelling cause of the marriage had been the resources represented in the said inventory. Not even on the mere grounds of propriety and civility may Guido be reproved; because when the said inventory was produced by Pietro in the trial, the Abate Paolo Franceschini was very much surprised at it, so that he took his brother to task about it by letter, and Guido replied that he had done it at the instigation of Violante. For she desired the completion of the marriage and, seeing Pietro irresolute, she induced Guido to give the abovesaid inventory with some modifications for the purpose of stimulating her husband thereto.

The marriage was finally effected, and they all went back together to the city of Arezzo.⁹⁴ Nor were the Comparini mistreated there, as they tried to prove by the unauthoritative deposition of a servant,¹¹⁰ who had left the house in anger. One mere reading of this deposition is enough to assure one that she did this with a bad motive and at the instigation of others, as she herself has declared to various persons. This deposition shows sickeningly the distasteful prejudice with which it was conceived, and especially where she says that a little sucking lamb [cf. p. li] was made to serve as food for seven or eight persons throughout an entire week. And there are other matters alike unfit for belief. [The Comparini] were indeed treated with all consideration and decorum, as Monsignor the Bishop [cf. pp. xci-xcii] and the Governor [cf. pp. lxxxi-lxxxii] of the city attest; and they are persons much better qualified to judge and much more worthy of belief than a malign and suborned servant. But you may also have the attestation of one who was serving in that household for thirteen months, during the time when the abovesaid Pietro and Violante were there [cxliii]; and he is able to tell many particulars of the good treatment which they received at the hands of the Franceschini.

It is quite true that disturbances of considerable importance arose in that household; but they were occasioned by the bitter tongue of Pietro⁹⁵ and the haughtiness of Violante, his wife. For they laughed at all the proceedings of the Franceschini, and thrusting themselves forward, with pretense of superiority, they brought upon the mother of the Franceschini, and upon the rest of the family, bitter vexations, which were hidden at the time, to avoid violating the laws of hospitality.

And notwithstanding all this, when Pietro and his wife decided to return to Rome, as soon as they expressed their wish, they were provided with money for the journey, and in Rome with furniture to put in order the house they had left.⁹⁹

As soon as Pietro and Violante arrived in Rome,¹⁰⁰ a judicial notice was dispatched at the instance of Pietro, in which he declared that Francesca Pompilia was not really his daughter, and that therefore he was not bound to discharge his promise of dowry.²⁶⁰ To prove this fact, he brought the attestation of his wife Violante. In substance, she declared that for the purpose of keeping her husband's creditors from their rights,¹⁰⁷ by virtue of the reversionary interest,⁶⁹ and also for the purpose of enjoying the income of the bonds,⁵³³ she had feigned that she was pregnant and then, with the aid of a midwife, that she had brought forth a daughter.¹⁰³ This was Francesca Pompilia, who had come of a most vile parentage.

From this blameworthy act made public so suddenly throughout the entire Court, there necessarily arose in the Franceschini an intense hatred toward the authors of it. But they were able to restrain themselves from the due resentment in the hope that if Francesca Pompilia were not indeed the daughter of Pietro and Violante, as was supposed at the time of the espousal, the marriage might be annulled and they might thus purge themselves of such a blot on their reputation.²⁹⁷ Witnesses of this feeling of theirs are found in the many authorities and experts who were requested by the Franceschini to give thought to that point and to express their opinion of it. But as these did not agree, the Franceschini were unwilling then to commit themselves to so doubtful an undertaking, in the prosecution of which they would necessarily be obliged to presuppose and confess that she was not the child of the Comparini. By such a confession [cxliv] they would be prejudiced in their interest in the dowry. And therefore they thought well then to pass the matter by that they might avoid exposing themselves to the danger both of losing the dowry and of being unable to nullify the marriage.

Nevertheless they opposed the notice and obtained for Francesca Pompilia the continuance in quasi-possession of her daughtership²⁶³ and a decree for the transfer of the dowry bonds.⁵³³ But Pietro appealed from the decree,²⁶⁴ and the case was continued in the *Segnatura di Giustizia*.²⁶² This was followed by the copious distribution of pamphlets¹⁰⁹ throughout Rome, which had been printed by Pietro to the very grave injury of the honor of the Franceschini, not to say to their infamy. But the latter were able again to restrain the just resentment of their irritated minds by cherishing the hope of making the court acknowledge (as did follow) no less the falsehood of their adversaries than their own truth. Supported by this hope, they subsequently bore

with all patience the many insults planned against them by various cliques, and the twists and turns for hindering the transfer of the dowry bonds, the Comparini having trumped up various creditors, whether real or pretended. On account of this opposition, the Franceschini were made to feel the inconvenience and expense of that transfer. Nor have they had any benefit of the income; of which they have been able to obtain not even a two-months' payment.

To such a pitch had the affairs of the two parties come, when Guido, waking up one morning, found that his wife was not in bed. As soon as he arose, he found that his jewel box had been rifled^{198 200} and his wife had fled. Nor was the suspicion lacking that she had given an opiate¹⁹⁶ to Guido and the entire household the preceding evening; and it was thought that this had happened at the suggestion of Pietro and Violante, as he had more than once heard threats of it. He traveled quickly along the way to Rome,²⁰² and after a headlong journey he overtook his fugitive wife, in company with Canon Caponsacchi of Arezzo, at the inn of Castelnuovo.²¹⁰ And as he was alone and unarmed, and they were armed and resolute, he saw that he was unequal to avenging that excess. He therefore thought it well to have them arrested by applying to the authorities of the said place.²²² [cxlv] The court²²⁶ had both of the fugitives captured by the police.²²⁸ They were consigned to the jurisdiction of Monsignor the Governor of Rome,²⁷⁰ and were then conducted to the New Prisons.^{255 345}

The Fisc, indeed, makes much out of the particular that Franceschini should have avenged his insults in the act of overtaking them;⁴⁰³ but, as an adequate response, one should think of the impossibility of his carrying out his revenge because of their precaution in the matter of arms,²²¹ for Franceschini had heard along the way that the fugitives were traveling armed. In proof of this, also, when his wife saw her husband she had the hardihood to thrust at his life with bare sword.²²⁷ For this reason it was prudent moderation to check their flight then by arresting them. And this was all the more true because the adultery of his wife had not then been proved, and possibly he had a repugnance against imbuing his hands with the blood of her whom he had often held in his arms, as long as any hope was left alive of regaining his reputation in any other way than by her murder.

But afterward there were found the mutual love letters²²² of the same fugitives, barefaced and immodest and preparatory to flight. And from the cross-examination of the driver it became evident that during their journey in the carriage they had done nothing else than kiss each other impurely.²⁰⁶ And from the deposition of the host at Castelnuovo, Guido found out that both of them had slept in the same chamber.²¹⁵ Finally, from the sentence or decree of the court in condemnation of the Canon Caponsacchi to banishment to Civita Vecchia

for three years, for "having carnally known Francesca,"²⁷¹ the notoriety and publicity of this adultery followed. Let any one who has the sense of honor consider in what straits and perturbations of mind poor Guido found himself, since even the very reasonless animals detest and abominate the contamination of their conjugal tie, with all the ferocity that natural instinct can suggest. They not only avenge the immodesty of their companions by the death of the adulterer, but they also avenge the outrages and injuries, done to the reputation of their masters. For Elian³⁸⁵ in his Natural History tells of an elephant which avenged adultery for its master by the death of [cxlvi] the wife and the adulterer found together in the act of adultery. And there are other examples also, as Tiraquellus cites. [Citation.]

But returning to the series of events, it must be stated that, after the imprisonment of the fugitives, Guido also came on to Rome and was deeply affected and, as it were, delirious because of the excesses of his wife. He was comforted by his good friends with the hope that this attempt at flight, taken along with the lack of decent parentage of Francesca (under supposition of which he had contracted the marriage) would facilitate the dissolution of that marriage,²⁹⁷ and in that way all the blots upon his reputation would be canceled. Hence, with this hope he returned to his own country, leaving the management of the affair to the Abate, his brother.²⁵⁶ The Secretary of Sacred Assembly of the Council may be a witness of this; for Abate Paolo presented the matter to him and entreated him to propose, in that sacred assembly, this point of law as to the validity of the marriage then—that is, after a criminal sentence in the Tribunal of Monsignor the Governor²⁷⁰ had been obtained.

In the meanwhile the same Abate attended to the plan of petitioning the conclusion of the said criminal cause.²⁶⁹ When Pompilia, to avoid conviction by the love letters, had recourse to the falsehood that she did not know how to write,²³⁵ it was easy for the Abate to convict her of that lie by showing the marriage agreement signed with her own hand, as well as by a Cardinal³⁹ now dead, by means of the recognition of the handwriting. But in spite of this, when the merits of the case had been made known everywhere, the same Abate perceived that instead of his being pitied, little by little every one began to laugh at him and to deride him, as he has told several persons. Perchance the attempt was being made to introduce into Rome the power of sinning against the laws of God with impunity, along with the doctrine of Molinos⁵²⁸ and philosophic sin, which has been checked by the authority of the Holy Office. So many persons would desire to blot out from the minds of men their esteem of honor and of reputation in order that they might sin with impunity [cxlvii] against the laws of men and might give opportunity to adulterers without any check from disgrace or shame.

And it is certain that the Abate, seeing the cause unduly protracted, had just grounds for placing it at the feet of our Lord [the Pope],²⁸⁰ with a memorial in which he declared that he could no longer endure such important and such various litigation and vexation arising from that luckless marriage, and he prayed that a special sitting be appointed for all the cases—that is the ones concerning her daughtership, her flight, her adultery, the dowry, and others growing out of the marriage as well as the one concerning its annulling. But he had no other reply than: “The matter rests with the Judges.”²⁸¹ So, with devout resignation to His Holiness, he awaited the outcome of the said criminal trial, from which he hoped to regain, at least in part, the reputation of his house.

In the meantime, Pietro Comparini was supplied with plenty of money from the full hand of some unknown person, possibly a lover of the young girl. He vaunted his triumph boldly in the throngs and the shops, places of his accustomed resort, and he praised the resolution and spirit of his daughter for having known how to trick the Franceschini with a disgraceful flight and with the thievery of such precious things, and for having found an expedient to give to the judge in the trial such good replies with all details thereof. He also boasted that in a little while she would return to his home despite the Franceschini. For he would bring so many lawsuits and scandals upon them that they would be forced to be silent and to let matters run on. For these statements we can have the attestations of many persons, in case they are needed. Therefore, because of such stinging boasts and such irritations, the mind of Guido was ever more embittered in spite of all the power he could master for restraining the impetus of his anger which had been provoked by such injuries.

Francesca Pompilia had been previously transferred from the prisons into the Refuge called *della Scalette*,²⁷⁶ where she stayed for some months.²⁸⁵ Then it was discovered that she was pregnant and many attempts were made to secure an abortion. For this purpose, powders and other drugs were given several times by the mother. As this proved useless she was remanded to the home of Pietro and Violante²⁸⁴ on the pretext²⁸³ of an obstruction and the necessity of relieving herself. [cxlviii] There, at the approach of the physicians, her pregnancy was discovered. The truth is, that when her womb began to grow, the nuns did not wish for her confinement to take place within their walls, and therefore a pretext was found for removing her on the grounds of the said obstruction and the necessity of removing it.

Now at this point the Abate found it necessary to break the bonds of his forbearance; for although it was indirectly that he was offended, that is, in the person and honor of his brother, nevertheless it seemed to him that every man's face had become a looking-glass, in which was

mirrored the image of the ridicule of his house. Therefore, being humiliated, though he was strong and constant in other matters, he often burst into bitterest tears, until he felt very much inclined to throw himself into the river, as he indeed declared to all his friends.³⁰⁵ And to free himself from such imminent danger, he decided to abandon Rome,³⁰⁴ the Court, his hopes and possessions, his affectionate and powerful patrons, and whatever property he had accumulated during thirty years⁴³ in the same City. Any one may imagine with what pain he parted from these and went to a strange and unknown clime, where he would not meet the fierceness of his scorers, which had been merited neither by himself nor his household.

But the injury of Guido, arising from a sharper and severer wound, within his very vitals as a husband, had the power to arouse his anger even to the extreme. Nor did he consider it sufficient redress to punish himself with voluntary exile for the crimes of others; for such a resolution might be considered by the world as a plain proof of his weakness and cowardice. He soon had sure information that, during the month of December, Pompilia had given birth to a boy²⁹⁹ in the home of the Comparini, which child had been intrusted secretly to a nurse.³⁰⁹ He also heard that the infamy of the friendship with the said Canon had been continued, inasmuch as he was received as a guest into the said home (as was said).²⁹³ For like a vulture, Caponsacchi wheeled round and round those walls, that he might put beak and talons into the desired flesh for the increase of Guido's disgrace. Guido accordingly felt the wildest commotion in his blood, which urged him to find refuge for himself even in the most desperate of determinations.

[*cxlix*] In the meantime he turned over again and again, as in delirium,³⁰⁶ his sinister thoughts, reflecting that he was abhorred by his friends, avoided by his relatives, and pointed at with the finger of scorn by every one in his own country. And the word went abroad that in Rome they were selling his reputation at an infamous market. (This matter has moved the treasurer of the Convertites,³⁰⁴ since the death of Pompilia, to begin proceedings and to take possession of her property.) Added to the above were the continual rebukes which he received because of his lost honor, so that he became utterly drunk with fury.³⁰⁶ He left Arezzo with desperate thoughts, and when he had reached Rome he went to that home which was the asylum of his disgraces. Nor could he have any doubt how much the very name of the adulterer was respected; for when Guido made pretense of delivering a letter of his sending,³²¹ the doors were immediately thrown open: and so, scarcely had he set his foot upon the threshold, before he saw his dishonor proving itself before his very face; of which dishonor he had heretofore had only a distant impression in his imagination. Then bold and triumphant, he no longer feared to upbraid her with unmasked

face for all the insults which had been inflicted upon his honor in that household; and as he looked all around at those walls ³²² incrustated with his heaviest insults and with his infamy, the dams of his reason gave way and he fell headlong into that miserable ruin of plunging himself with deadly catastrophe into the blood of the oppressors of his reputation.

There is no doubt that Franceschini has committed the crime of a desperate man, and that his mind, when it was so furious, was totally destitute of reason. As he had lost his property, his wife, and his honor, there was nothing else for him to lose unless it were his miserable life. For, as Paolo Zacchia, the learned philosopher and jurist says in speaking of anger in man: "Such and so great is its force that it does not differ at all from insanity and fury." Galenus very clearly affirms this, adding that when in law it is known that crimes are committed in such a state, they are punished with a smaller penalty, even though it has to do with the very atrocious crime of parricide. Calder [Citation] also gives many other matters on our point in No. 27 and the following numbers. And these theoretic propositions [cl] are verified in actual practice in Guido; for he was so utterly mad and void of reason that he entered upon so great an undertaking even at an hour of the night when many people were around. And after that he took no precaution,³³⁴ such as any other person of sound mind would have taken in governing his actions. He set out by the high road on his journey of about seventy miles from the outskirts of the city without providing any vehicles,³³⁷ as if he were merely a traveler leaving Rome. These circumstances are plain evidences of an offended and delirious mind. [Citations.] St. Jerome writes in his letters:⁴⁷⁶

"Where honor is absent, there is contempt; and where contempt is, there is recurring insult; and where insult, there indignation; and where indignation, there is no quiet; and where quiet is wanting, there the mind is often thrown from its balance."

Nor in this case does the legal distinction enter as to whether the one driven by anger committed the crime in the first impulse of anger, or after an interval of time. For this distinction might have a place when the anger arose from an insult in some transitory deed, and one that was not permanent. But in the case we are treating the insult provocative of anger consisted of frequent and reiterated acts; that is, not so much in the passing of the wife from the nunnery to the home of Pietro under an empty and ridiculous pretense, but still more from her staying in the said home with the aggravating circumstance of his own infamy (as has been said above). Accordingly, as the injury is permanent because of the continual affronts which the injured one received, so the vengeance is understood to be taken immediately and without any interval.⁴⁰⁵ This the defenders of the cause have suffi-

ciently proved in their no less erudite than learned writings with their very strong arguments and their unsurpassable learning.

¶ Nor does it amount to anything for one to say that the crime was aggravated, first by the kind of arms ⁴¹³ used; for Virgil [A, I, 150] says: *Furor arma ministrat*,⁵¹⁴ nor, secondly, by the company of four, or let us say the conventicle;⁴⁰⁹ nor, thirdly, by the place,⁴¹⁷ the excess, or the other circumstances considered by the Fisc. For in a madman, everything is excusable, as it is axiomatic and a very sure principle that nature then arises in such a way that it drives a man from himself, whatever manner is possible, etc. In conformity therewith [cli], Fracosto speaks as follows:⁴⁷⁸ "And in truth an ingenuous mind, and one that knows the value of its own honor and reputation, is very painfully offended in a part so sensitive and so delicate; and at such a time reaches the limit of madness and of desperation; for it has lost the light of reason, and in delirium and frenzy can not be satisfied even if it succeed in turning upside down, if that were possible, the very hinges of the Universe, for the purpose of annihilating not merely the authors but the places and the memory of its insults and shames. For "The rage and fury of a man does not spare in the day of vengeance, nor does it grant the prayers of any, nor does it accept in requital many gifts," as the Holy Spirit speaks on this point, through the mouth of Solomon, in the sixth chapter of Proverbs, at the end.⁴⁷⁹ With this very well agrees what St. Bernard has very learnedly written in his letter to his nephew Robert at the beginning:⁴⁸⁰ "Anger indeed does not deliberate very much, nor has it a sense of shame, nor does it follow reason, nor fear the loss of dignity, nor obey the law, nor acquiesce in its judgment, and ignores all method and order."

There is no doubt that Samson ⁴⁸¹ reached this pitch when he fell into the power of his enemies. He suffered with an intrepid mind the loss of his eyes and other grievous disasters, but when he saw that he was destined to serve as a pastime in public places, and when he there heard the jeers and derision of the people, the anger in his breast was inflamed, so that, all madness and fury, he cried out: "Let me die along with the Philistines." And giving a shake to the columns which sustained the palace he reduced it to ruin: "And he killed many more in his death than he had killed while alive," as the Sacred Witness testifies. And Christ himself,⁴⁸² although he was very mild and had the greatest patience while receiving opprobrium and insults without ever complaining, yet answered, when he knew that his honor was touched, "My honor I will give to no one."³⁹³ And it is certain that any one who cares for honor and reputation would rather die an honored man beneath *mannaia* ⁴⁴¹ than live for many ages in the face of the world with shame and dishonor.

[clii] This argument, strong as it is, has succeeded in weakening one wise and earnest adherent of the Fisc. And this is why the very learned pen of Monsignor of the Fisc has uttered the following period, which says [cf. p. lxii]:

“But because the Comparini claimed that the furnishing of food to Francesca while in prison was the duty of Franceschini, and the latter declared that it belonged to the Comparini, the Most Illustrious and Reverend Lord Governor, after having the consent of Abate Paolo, own brother of Guido, and his representative in the case, assigned the home of the same Comparini to Francesca as a safe and secure prison under security.” But this fact can be clearly explained so that it will not form an objection.

When Francesca Pompilia was about to be taken from the prison to the nunnery, Abate Franceschini was asked to provide the food,²⁸² with the statement that if he refused there would appear a third and unknown person who would assume the burden of it to their dishonor. Therefore the Abate wished once for all to put an end to any chance of receiving new insults; and to avoid every charge of preserving even the slightest sign of relation with this disgraceful sister-in-law, accepted a middle way proposed to him, namely, that Lamparelli, as Procurator of Charity, should make provision for it by the disbursement of his own funds and should pay it back again by what reasonably belonged to the Franceschini; for he reimbursed himself for it with the money which had been found upon the fugitives, and which had been stolen from the husband; at her capture, this money was placed on deposit in the office, where there remained so much of it still that, after all was over, the balance of it was consigned to the same Abate.

And as when the said Francesca was transferred from the nunnery to the home²⁸⁴ of Violante, all the preceding and succeeding circumstances made it very improbable that the Abate gave his consent,²⁸⁸ and as this consent is not found registered among those acts, it seems very clear that it was not given at all. Nor could he legally give it, for he was not the representative of his brother in that matter; for his authorization confined him solely to the power of receiving back [cliii] the money and other things which were deposited in the office. This is proved by his acts and by the story which the Abate then gave to his friends and relatives; and it utterly destroys the assertion of the Fisc, since Abate Paolo says that he was indeed notified that the young woman was obliged to find relief in an indisposition, certified by a physician, and that she was obliged to leave the nunnery and to go back to her father's home. To this, as it seemed a mere pretense, he replied that he could easily undertake to purge the wife in the nunnery without exposing her to such evident danger of greater shame. He also said that he wondered very much that the affection of a father had so suddenly

returned in Pietro Comparini for Pompilia, whom he and his wife had so often denied as their daughter. He wondered how they could both be, and not be,²⁸⁹ the parents of the said woman, according to their own desires to the injury of the house of Franceschini.

And if the solicitor, for the purpose of giving color to the honor of the said lady, has falsely urged many justifications, it is to be noted that in substance all that he says on that point is founded on what with her own mouth she has said in her own favor and what she has proffered to free herself from the blame of her sins, both at this juncture and in the flight, as well as in the trial which may be referred to; in fact, quite the contrary is evident; and from the external tests which the Convertites^{276 277} intended to make, but from which they abstained when they heard the news of the birth of the son. And would that it had pleased God that she had observed the laws of holy modesty! for in that case so great a misfortune would not have resulted from her whims. We should notice, further, that the declaration made by the wife in the face of death may be doubtful in itself,³⁶² in the sense that after confession and absolution one's sin is canceled as if it had never been committed, so that in a court of justice she would no longer have any need of pardon. Therefore, from the above-cited circumstances and very strong reasons, there is no room to doubt that Franceschini deserves the indulgence which the laws give to excesses that find origin from the stings of honor. And, if we were within the circumstances under which the case ought to be adjudged according to expediency, without any hesitation, [cliv] Franceschini should be punished mildly to diminish the force of immodesty and impudence. For the woman is not without adherents, who triumph throughout all Rome in a coterie of treachery, both in public and in private. This is for the oppression and derision against husbands⁵⁶ who have regard for their reputation. And they give the title of pedantry to that circumspection which one ought to practice for the preservation of his own honor.

[clv]

SUMMARY.

[Pamphlet 11.]

OCTOBER 12, 1697.

No. 1.²⁸⁶
Bond given by Francesca
Pompilia to keep her home
as a prison.

Before me, etc., Francesca Pompilia, wife of Guido Franceschini of Arezzo, was placed at liberty, etc., and promised, etc., to keep to this home of Pietro (son of the former Francesco Comparini), etc., situated in Via Paolina,²⁹² as a safe and secure prison, and not to leave it, either by day or by night, nor to show herself at the doors or open windows, under any pretext whatsoever, etc., with the thought of having to return again to prison, etc. And after she has recovered her health to present herself at any time whatsoever, etc., at every command of the Most Illustrious and Most Reverend Lord Governor of the City; for the cause concerning which there was argument in the trial, etc., from proofs that may arise, whether new or not new; under the penalty of 300 scudi, laid by the Reverend Apostolic Chamber in the case, etc.

This is followed by the surety in due form.

NOTARY FOR THE POOR.

No. 2.⁸⁶
Certificate of the Baptism
of Francesca Pompilia.

I, the undersigned, certify, etc., as is found in the baptismal record, page 152, the particulars given below, namely:

July 23, 1680. I, Bartolomeo Mini, curate, have baptized the infant daughter born on the 17th¹⁵ of this month to Pietro Comparini and Violante Peruzzi, who live in this parish. To her the following name was given: Francesca Camilla Vittoria Angela Pompilia,¹⁴ etc. In pledge of which, etc.
Rome this 9th day of February, 1698.³⁸⁵

Thus it is, Pietro Ottoboni,²⁵ Curate of San Lorenzo in Lucina.

My dear Father and Mother:

No. 3.
Letter of Francesca Pom-
pilia, written in the prison
of Castelnuovo to her parents.

I wish to inform you that I am imprisoned here in Castelnuovo for having fled from home with a gentleman with whom you are not acquainted. But he is a relative of the Guillichini, who was at Rome, and who was to have accompanied me to Rome. As Guillichini was sick, and could not come with me, the other gentleman came and I came with him for this reason, because

[clvi] my life was not worth an hour's purchase.²⁵⁰ For Guido my husband wished to kill me, because he had certain suspicions, which were not true, and on account of these he wished to murder me. I sent you word of them on purpose, but you did not believe the letters sent you were in my own hand.²⁴⁹ But I declare that I finished learning how to write in Arezzo. Let me tell you that the one who carries this was moved by pity and provided me with the paper and what I needed. So as soon as you have read this letter of mine come here to Castelnuovo to give me some aid, because my husband is doing all he can against me. Therefore if you wish your daughter well, come quickly. I stop because I have no more time. May 3.²⁵⁴

Directed to Signor Pietro Comparini, my father, Via Vittoria,⁶⁸ Rome.

No. 4.
Another letter of the same person, in which she calls the Canon to task for dishonorable advances.

I give you infinite thanks for the octaves which you have sent me. All of these are the very contrary of the Rosalinda, which was as honorable as these are immodest. And I am surprised that you who are so chaste have composed and copied matters so immodest. I do not want you to do in everything as you have done in these books, the first of which was so very nice; while these octaves are quite the contrary. I can not believe that you, who were so modest, would become so bold, etc.

No. 5.
Portions of the will of Pietro Comparini.

As to each and all of my properties, etc., I appoint, as my usufructuary heir, my wife Signora Violante Peruzzi, etc. And when she dies I appoint in her stead, in the said usufruct of my entire estate, Francesca Pompilia, the wife of Signor Guido Franceschini of Arezzo. And I do so because of her good character and because for a long time, yes, for many years, I looked upon her in good faith as my daughter, and thought that Signora Violante my wife and myself were her parents. Then I found out that both she and I were tricked in that belief, thanks to the vanity of the schemes, unfortunately conceived by my said wife, to make me believe in the birth of the same daughter. And because of a scruple of conscience¹⁰¹ after the marriage of Francesca [clvii] Pompilia, this fact was revealed to me by Signora Violante my wife. And this pretense of birth was found by me to be a fact because of the information of it from persons worthy of credit.²⁶¹

All this I grant, therefore, on the condition that the said Francesca Pompilia seek again her own city and stay here in Rome, etc., in which city I hope she will live chastely and honestly, and will lead the life of a good Christian. But if she do not come back to this city, or if when she has come back she live with shameless impurity (and may God

forbid that), I wish that she be deprived of the said usufruct of my estate and that opportunity be given for a substitution in favor of the heir mentioned below, as proprietor, etc. Because thus, etc., and not otherwise, etc. And because the chance might arise that she be left a widow, or that her marriage be dissolved, since a lawsuit ²⁶⁰ is going on, which was brought before Monsignor Tommati ²⁶² by the Olivieri as to her relation as child, and if the said Francesca wish to marry again, or become a nun, I am willing that she separate from my estate as much as 1,000 scudi for the purpose of remarrying or becoming a nun, if she shall so please. And I advise her not to marry again, lest she subject herself a second time to other deceptions. Still further, I give her the power to leave by will 200 scudi more of my estate. And in the event that Signor Guido die first, whereby there would come about the restitution to the said Francesca Pompilia, etc., of the money received by Signor Guido, to the sum of about 700 scudi, etc. (which I think would be at least very difficult, if not impossible, because Signor Guido is wretchedly poor and his family is very poor), I wish that these moneys be not counted against the said Francesca Pompilia in said 1,000 scudi, much less in her power of making a will, because then, etc.

OCTOBER 7, 1694.

No. 6.

Authorization for the management of his affairs made by Guido Franceschini to the person of Abate Paolo, his brother.

Guido, son of the former Tommaso ⁴⁸ di Franceschini of Arezzo, of his own will, etc., made and appointed, etc., to be his true, etc., representative, etc., special and general, etc., Abate Paolo Franceschini, his own brother, now living in Rome, etc., for the purpose of carrying on and defending, in the name of the said Constituent, all lawsuits and causes, civil or mixed, already brought or to be brought for any reason whatsoever, and against any persons whatsoever, anywhere, and especially in Rome, whether as plaintiff or defendant [clviii], before any judge, either ecclesiastical or secular, whether before the Congregation or Tribunal, and before one or both, to give or receive charges, or to contest lawsuits, to take oath as regards the calumny, and to furnish whatever other testimony is lawful, etc., and to carry on and obtain each and all other necessary matters, in the same manner and form as the Constituent could, if he were present, and as seems well pleasing to the said Procurator, etc., promising, etc., and demanding, etc.

I, Joseph, etc., de Ricii, Notary Public, etc., of Arezzo was asked, etc., in pledge whereto, etc.

[File-title of Pamphlet 11.]

*By the Most Illustrious and Most Reverend
Lord Governor of the City
in Criminal Cases:*

Roman Murder-case, with qualifying circumstance.

*For the Fisc, against Count Guido Franceschini
and his Associates.*

Summary.

At Rome, in the type of the Reverend Apostolic Chamber, 1698.

[clix]

Romana Excidii.

[Pamphlet 12.]

Most Illustrious and Most Reverend Lord:

Why should we waste time in disputing the point whether adultery committed by Francesca Comparini with Canon Caponsacchi, as is claimed by the other side, is sufficiently proved? For in our first information [Pamphlet 5] as to the law and fact in the case, we have already declared that judgment was given in the *Congregation* only for the penalty of banishment²⁷¹ to Civita Vecchia against the abovesaid Canon, and of retention in the nunnery²⁷⁶ against Francesca, because of the very lack of proof²⁷³ of the said adultery. And this is quite right in law, because neither the Canon himself nor the said Francesca have confessed, much less been convicted of it; and because the suppositions brought on the other side are trivial and equivocal. But, even if these latter had been weighty and very urgent, they would not have been enough to establish conclusive proof, but at the most could only lead the mind of the judge to place some minor punishment upon them arbitrarily, as Farinacci testifies. [Citation.]

Therefore there should be strict insistence on behalf of the Fisc upon the point that Guido Franceschini had not the right to kill, after an interval, his wife, whom he had not taken in adultery nor in base conduct, without incurring the ordinary penalty of the *Lex Cornelia de Sicariis*. For in our former writings, § *Alii vero* [cf. p. lxiii] we have proved by the strength of many distinguished authorities that a husband who kills his wife after an interval is not excused from the said penalty.

Now that this fundamental assertion [in their argument] is overthrown, we declare that the rights of the Fisc can not at all be controverted in the case with which we are dealing, since the authorities alleged by the Defense, who excuse a husband from the ordinary penalty, speak in the case of simple murder; and they ought not, accordingly, to be extended to a case made still graver by qualifying attendant circumstances. And for this reason, because the penalty can not possibly be the same, when the crime is greater in the one case than in the other. [Citations.]

Nor for the purpose of overthrowing this fundamental idea of the Fisc can the objection be made that all the qualifying and attendant circumstances, which have been brought together in behalf of the Fisc [clx] should have no consideration, because they tend toward and are preordained for the end had in mind; for the end and intention of Count Guido was directed toward the murder of his wife and the vindication of his honor. But one can well understand how fallacious

this argument really is, from what I have already written in § *Prima enim* [cf. p. lxiv] together with the one following, and § *secunda qualitas* [cf. p. lxv] and *si ergo* [cf. p. lxv]. There we have proved that the learned authorities who can be adduced by the other side speak and should be so understood when the end is licit and not prohibited by law, or else when some qualifying circumstance, through the force of particular Constitutions or Banns, does not establish some further capital crime, distinct and separate. And this is true whether the pre-ordained end in the mind of the delinquent follow or do not follow.

But in our case, from what has been conceded by the lawyers for the Defense, the husband is not permitted by law to kill with impunity his wife, after an interval, for adultery. But he is permitted by law to slay the vile adulterer and his adulterous wife only when taken in adultery. How then can these authorities be applied to our case? For they hold good and find a place for themselves only in a case permitted by law. In these circumstances speaks Laurentius Matthæus [Citation], who is cited by the other side, where in his setting forth a case we may read: "The adulterer and adulteress were slain in the home of the husband, although in that case the husband did not escape unpunished, because he had used firearms."

Nor does it hold good in law and practice that the bearing of arms ⁴¹³ is included along with the crime committed. Not in law, as we have affirmed in our other argument § *si ergo* [cf. p. lxv]; nor in practice, because in all the tribunals of the entire Ecclesiastical State, it is held that even when murder in a rage has been committed, if it has been committed with the arms which are prohibited under the capital penalty, especially if these arms come into the possession of the Court, a more severe penalty is inflicted. And murders which should suffer a lighter penalty because they were done in anger are condemned under the ordinary penalty because of the carrying of such arms. Farinacci and Guazzini testify that this has been the practice in the Ecclesiastic State while this Decree has held good. [Citations.]

Still less applicable are the other authorities, who were adduced to escape the order of the Constitution of Alexander. For although [clxi] it is true that for this crime the penalty threatened by the same decree does not enter, unless these three matters are concurrently present, namely craft, the occasion of a lawsuit, and the fact that no provocation has arisen (as Farinacci holds [Citation]), yet in our case, all of the abovesaid concur. As to the craft, there can be little doubt, since by the very confession of the Defendants we have knowledge of the preceding discussion and deliberation for committing the murders. And Decian and others affirm the charge of craft may arise from such a discussion. [Citations.]

The presence of a lawsuit ⁴²¹ is likewise undoubted; because, on the representation of Pietro Comparini, suit ²⁶⁰ was not only brought before A. C. Tommati ²⁶² as to the dowry promised and the goods subject to entail, for the exclusion of the said Guido Franceschini and Francesca his wife, but also a sentence favorable ²⁶³ to the said Franceschini has been handed down by the same judge.

But still further we may gather, from the confession of Franceschini himself, that the provocation whereby he was moved to kill his wife arose because of the pretended adultery; on this point the counsel for the defense have principally insisted. Nor can they deny that this same cause was introduced in the criminal prosecution in the presence of the judge by the same Franceschini. It is quite necessary, then, to acknowledge that this ought to justify the application of the penalty of the Alexandrian Bull; for this decree speaks in a civil as well as criminal cases, as is evident in the fourth paragraph of the same Bull, where we read: "That successively in future times forever, each and all persons, ecclesiastical and secular, of whatever quality, dignity, state and grade of rank and prominence, in their own causes philanthropic or profane, also in criminal and mixed cases, whether now before this Court or pending for the time, their adversaries, or those following or helping them, or the advocates or counsel of them." And also in the place where we read: "If mutilation of limb, or death (which God avert) follow, they incur *ipso facto* beside the loss of their right and case, the sentence for the outraged majesty of the Law."

We believe we have sufficiently canvassed these matters with galloping pen because of the shortness of the time of merely three hours, to prove clearly that [clxii] the foundations of the Fisc affirmed in our former writings still stand fast, in spite of what has been recently deduced by the opposition so fully and so learnedly, but without legitimate proof.

F. GAMBI,
Procurator General of the Fisc
and of the Reverend Apostolic Chamber.

[File-title of Pamphlet 12.]

*By the Most Illustrious and Most Reverend
Lord Governor of the City in
Criminal Cases:*

*For the Fisc, against Count Guido Franceschini
and his Associates, Prisoners.*

*Response of The Lord Procurator General
of the Fisc.*

At Rome, in the type of the Reverend Apostolic Chamber, 1698.

[clxiii]

Romana Homicidiorum.

[Pamphlet 13.]

Most Illustrious and Most Reverend Lord:

In the beginning of his recent information [cf. p. cxxv], my Lord Advocate of the Poor has criticized as unjust the decree of this Supreme Tribunal, which inflicted the torture of the vigil ⁵²⁶ upon Count Guido Franceschini and his associates, for the purpose of getting confession of that most horrible crime committed by them. Hence he claims that those confessions, given under the fear of it and ratified after it was over (as is the custom), can not do the Accused any harm. He attempts, indeed, to deny the justice of the said decree, not merely because of the absence of the quality of special atrocity (as required by the decree of Paul V of sacred memory for the reformation of the tribunals of the City), but also from the fact that the death penalty can not be demanded for the crime under discussion. And this he claims is so (in spite of the unusual powers for ordering the torture of the vigil granted to this Tribunal) lest there may be greater harshness in the course of the trial than in the penalty itself. [Citation.]

In the end of this said recent information [cf. p. cxxxviii], he also criticizes me ⁴²⁵ because, to the very great wonder of himself and others, I have failed in my duty of seeking the truth in that I have made certain allegations in the defense of the rights of the Fisc, which I have not communicated to him. I thought he had complained quite enough about that orally, so that he might have spared us his new complaint. But it was not my duty to tell them to him, just as his informations, which he made for the Defense (very learned indeed in their way), have never been made known to me by him. But I assert only this, that I have paid the price of much labor, lest I may seem to have failed in my office and in the reverence with which I attend upon my Lord.

Passing over, therefore, my own personal apology, I go on to vindicate the decree of this Tribunal from the injustice charged against it. I also omit proof of the quality of the crime as to whether it may be considered very atrocious for I have abundantly argued this point in my past response, § *Sed quatenus etiam* [cf. p. lxxvi], with the one following. For I showed that this quality could be sustained because of the attendant circumstances which exasperated and raised the crime to the outraging of the majesty of the law, ⁴²⁰ according to the provisions of the Apostolic Constitutions and the General Banns. I think it is quite enough in my present argument to show that for this offense the death penalty [clxiv] should be demanded. I hope to accomplish this with little difficulty, since from the very kind of severe torture decreed, by

judges of such integrity, the applicability of this said penalty is presupposed. And so since nothing new, whether in fact or in law, can be brought, which has not been already examined in relation to the cause for decreeing the torture, now that the confession of the Accused has followed, it is the duty of the Judges to pronounce the execution of the well-deserved penalty, which has been long expected by everyone.

I have said that nothing new is brought by the defense, since their special attempt consists in repeating the plea of injured honor because of the pretended adultery committed by the wife of Guido, with the help and conspiracy of her parents, who were barbarously slaughtered along with her. This plea is offered for the purpose of exciting the pity of my Most Illustrious Lord, and the Lords Judges, in order that Guido and his associates may be punished more mildly, according to the authorities adduced on that point in their first information § *hoc stante* [cf. p. xxv] together with the one following, and § *Predictis nullatenus* [cf. p. xxxii], likewise with the one following; and in the present information, § *Verum & socios* [cf. p. cxxvi]. But the same response recurs that for the Accused this exception on the plea of pretended injury to honor can afford no refuge, because this plea has no foundation in fact and is irrelevant in law.

For what difference does it make even if the mere strong suspicion of adultery is enough to excuse vengeance taken immediately by a husband against his wife or her lover? If she were found either in lustful acts, or in those preparatory thereto, then because of such a sudden grievance excited thereby, which provokes a man to anger, the penalty should very often be tempered according to the nature of the case and the persons. But it is quite certain that to escape the ordinary penalty of the *Lex Cornelia de Sicariis* for the murder of a wife committed after an interval, the mere suspicion of adultery, however strong, is not enough; but the clearest proof of it is required, either from the confession of the wife herself or from a condemnatory sentence following. [Citations.]

But such proof is entirely lacking in our case. For the luckless wife constantly denied the adultery even till the last breath of her life, as is evident from the sworn attestations of [clxv] priests and others³⁵² who gladly ministered to her after she had been wounded. For they unanimously assert that she always affirmed that she had never violated her conjugal faith.³⁵⁵ Nor did she ask that such sin be forgiven her by the Divine Clemency;³⁵⁶ this assertion indeed should have much weight, since no one is presumed to die unmindful of his eternal safety.³⁶² [Citations.]

Nor are the responses given by the Defense at all relevant; namely that such proof in denial of the adultery is drawn entirely from testimony taken out of court, and extorted by the heir³⁵³ while a lawsuit was

pending, to remove the annoyances brought by the Monastery of the Convertites,³⁶⁴ and that some of the undersigned were legatees. They also respond that since such an assertion as hers served to cover her own baseness, it should not be believed, especially as it was not sworn. And further, that although no one is presumed to be unmindful of his eternal safety, yet all are not supposed to be immune from sin, like Saint John the Baptist, which is especially true when the argument is about the prejudice of a third party⁵³⁴ and about the more severe punishment of an enemy of the one making declaration.

Now that all these claims are destroyed with so little trouble, the irregularity of the proof could stand in our way, if the Fisc were obliged to assume proof and perfect it. But the burden of proof rests upon the Accused, according to the authorities cited above for avoiding the death penalty, whenever a man kills his wife after an interval. The above attestations are brought merely to damage the proof of pretended adultery, offered by Guido. In this case, certainly, such attestations are not to be spurned, especially when we consider the quality of the persons attesting, since they are priests of well-known probity, and it is incredible that they would be willing to lie. [Citations.]

The further objection that these attestations were extorted by the heir, while a lawsuit was pending, for the purpose of escaping the trouble brought upon him by the Monastery of the Convertites, is also removed by the same reply; because when one is arguing for the proof of an assertion given in the last days of life and in the very face of death, [clxvi] proof can not be established, unless this hold good. And the heir is praiseworthy, because he is obliged to avenge the murder of the one slain, lest he be considered unworthy according to the text [Citation]: "Heirs who are proved to let the murder of the testator go unavenged are compelled to give back the entire property," etc. He procured these attestations that he might guard the good fame of the testatrix; and this was rather because of his zeal for her good repute than to prevent the annoyances unjustly brought, and the quashing of these latter could be turned back for the exclusion of the pretended proof of the dishonesty of the unfortunate wife.

Still less can it stand in our way that some of the signers are legatees, since their interest is not large enough to prevent their giving testimony. [Citations.] And this is especially true when one is arguing to prove a matter which happened within the walls of a home, and the proof of which, on that account, is considered difficult. [Citations.] And such an exception to their testimony, so far as it has any foundation, is utterly removed by the number of the witnesses subscribed to the said attestations. [Citations.]

But [last of all], as to the objection that the assertion of one dying is not to be attended, when directed toward the exoneration of one's

self, because no one is compelled to reveal his own baseness: This might indeed hold good if the adultery had been proved, and if it were not evident that, though wounded, she had died with strongest manifestation of Christian tenderness, which would exclude all suspicion of a lie. In this case such an objection does not hold good, but another very valid supposition takes its place, namely, that no one is believed to be willing to die unmindful of his eternal safety. [Citations.]

For Mascardus [Citation] [clxvii] says that a confession given in the hour of death holds good, and he adds that this approaches nearer the truth, and cites in proof of it Marsilius. [Citation.] The latter affirms that if anyone assert that a person making oath in the hour of death is lying, he says what is improbable. And Mascardus concludes that this opinion is more just, and more in accord with reason and with natural law. And though he offers some limitations, none of these are applicable to our case; and the question about which he was arguing was concerning the assertion of one wounded, as to whether such assertion constituted proof against the one charged; and this differs by the whole heaven from our dispute, if we only note that the burden of proof does not rest with the Fisc. Nor does the assertion of Pompilia when dying tend principally toward vengeance,³⁶¹ since it is quite evident from those making attestations that she shrank with horror from that, as she always professed that she most freely pardoned her husband.³⁵⁹

These matters we have noted beforehand rather in superabundance than because we were obliged to assert the justice of the decree of this Tribunal. It will now be easy to escape the proof of pretended adultery, brought by the counsel for the Defense. For so far as this proof is drawn from the other decree of this same Tribunal, condemning Canon Caponsacchi for flight and carnal knowledge with Francesca Pompilia,²⁷¹ the response⁵¹⁹ which has already been given holds good: namely, that a title should be given no attention,²⁷⁴ but merely the proof resulting from the trial, and the penalty imposed by the sentence. And what if in that decree, along with the "title" of "complicity in the flight and escape of Francesca Pompilia," there was also added the title "for criminal knowledge of the same"? Yet since in the trial itself no proof²⁷³ in verification of this was found, and since the penalty of three years' banishment, does not correspond therewith,²⁷² the mere title should not be given attention, according to the authorities adduced in my past response, § *non relevante*. [Cf. p. cxcv.]

And on account of the following reason, still less can such clear proof of the pretended adultery be established as is required to escape the ordinary penalty for taking vengeance after an interval. For at the instance of the Procurator of the Poor a correction was decreed by the Judges, with the approval of my Most Illustrious Lord, which substituted a general title relative to that suit, namely *Pro causa de qua in*

actis; and although this correction is not to be read in the record (commonly called the *Vachetta*) in which decisions are usually noted, [clxviii] yet it was made in the order for the dispatching of Caponsacchi to his exile and in the decree assigning to Pompilia the home as a prison. (Summary, No. 1.) [Cf. p. clv.] And since the latter was made with the consent of Abate Paolo Franceschini,²⁸⁸ we may assert that the said change of title became known to him because of his notorious solicitude in conducting the case; and so it would be very improbable that he had not carefully examined such a decree and the obligation made by Pietro to furnish her food,²⁸⁷ without hope of repayment, and the bond given for her to keep the home as a prison. For these reasons his knowledge of that change should be considered as sufficiently proved. [Citations.]

And therefore the response falls to the ground that the decree could not be changed unless both sides were given a hearing. For while Francesca Pompilia, whose defense had not yet been finished, was unheard, much less could the title of criminal knowledge be included in the condemnation of the Canon. For this would be injurious to her, not merely as regards her reputation, but also for the loss of her dowry, for which her husband was especially greedy.⁴⁶ For in this way would an undefended woman suffer condemnation, and what is worse, as the event shows, would be exposed to the fury of her husband. And hence with justice was this correction requested and made. And even if this had not happened, a sentence given against the Canon could not injure her, as it was a matter done with regard to other parties. [Citations.]

But it is quite gratuitous to assert that a change as regards the matter of the trial does also impart the same change as to the expression of the title of carnal knowledge. For since several titles were originally expressed in the decree of condemnation (such as complicity in flight, running away, and carnal knowledge, upon which the suit was based) the statement of the cause contained therein is no more probable as regards one than as regards another, and certainly it is not probable as regards them all. For if they had wished to include all those in the modified decree, they would have said: *Pro causis de quibus in Processu*, for the singular number does not agree with several causes. [Citations.] [clxix] But in the prosecution the charge of "criminal knowledge" was not proved and the Canon could not be condemned for that while Francesca Pompilia was unheard and undefended. This is on account of the indivisibility of the crime of adultery, which does not permit the division of the case for the purpose of condemning the one, while the case is pending as regards the other. And this is especially true when all parties are present and held in prison. [Citations.] The expression, therefore, *Causæ, de qua in Processu*, should be understood to apply only to the complicity in flight and running away

(for this could be issued without the condemnation of Francesca Pom-
pilia), and not to apply to "carnal knowledge." For the statement
made should be considered applicable only to those matters with which
the judgment relative thereto agrees. [Citations.]

And this claim of ours is rendered manifest by the mildness of the
penalty ²⁷² to which the Canon was condemned, namely, that of three
years' banishment. This certainly does not correspond with the offenses
of running away with a married woman from her husband's home,
bringing her to the City, and carnal knowledge of her. For inasmuch
as the attendant circumstance of rape, spoken about, is punishable by
the capital penalty, unless a priest is being dealt with, a far severer pen-
alty would have to be inflicted for the adultery alone, if proof thereof
had resulted from the trial. [Citations.]

My Lord Advocate of the Poor acknowledges that the penalty was
too light ²⁷² to expiate harshly such a crime, and especially in accordance
with the Constitution of Sixtus, revived by Innocent XI, of sacred
memory. And therefore to avoid acknowledging the lack of proof,
which might very well be inferred from the lightness of the penalty,
he attempts to respond that the said Canon was dealt with more mildly
because he was a foreigner and because the crime under consideration
had been committed outside of the Ecclesiastical State. [clxx] In
this case one should be dismissed merely with exile. But this response
is proved to be without foundation for many reasons.

First, because on account of the well-known privilege of the City of
Rome, which is the country of all men, even those may be punished here
who have committed crime outside of the Ecclesiastical State, which is
subject to the secular authority of the Pope. And this is true, not
merely for the handling of criminals, which is permitted to any Prince,
but for the trial of the crimes. [Citations.] Cyrill testifies that he
himself had so held in 1540, in the Capitoline Court, and Farinacci
testifies that it was so held in this same Court in the year 1580, in the
case of Gregorio Corso, who had been condemned to the galleys, because
he had committed murder in Florence and had come here to Rome,
after seizing the horse of the one he had slain. And this was notwith-
standing the fact that the cause was very sharply defended for the
accused. [Citations.]

Second, because this authority holds good whenever there is argu-
ment for punishing crimes committed by churchmen, who are subject to
the jurisdiction of the Supreme Pontiff, and in the City can be punished
for their crimes with the ordinary penalty, even though the crimes were
committed outside of the temporal authority of the Pope. [Citations.]
"Rome is a common country and, therefore, in the Roman courts any
cleric or layman may be brought to trial, even though he did not com-
mit his crime there." [Citation.]

Third, because inasmuch as it was claimed that the approach to the City and the carrying away of the wife to the same were done because of lust, and to secure greater liberty for knowing her carnally, by taking her from the home of her husband, so the Canon, on account of this purpose, would have subjected himself to penalties such as could really expiate the crime, and which also might be inflicted here in the City; for one is punishable with the same penalty who continues in a crime here, although he put it into effect outside of the State. [Citations.] Caballus [Citation] holds that, for deciding the jurisdiction of a judge over crimes that have been committed, the person offending, rather than the offense, should be considered. [Citation.]

Fourth, because the pretended carnal knowledge, so far as it [clxxi] can be said to be proved in the prosecution (and it can be verified that the decree was changed with relation to that), happened in the Ecclesiastical State; for the strongest proof of that crime was drawn from the asserted sleeping ²¹⁵ together in the same bedroom at the inn of Castelnovo. [Citation.] And therefore the Canon could and should have been punished with condign punishment, not merely for his undertaking, but for the adultery, if that had been proved. And since this was not imposed, it may well be asserted that the Canon was not at all condemned for "criminal knowledge," unless one wishes to criticize as unjust that decree, which imposed a mild penalty and one suitable merely to simple running away and complicity in flight, and which was much tempered because of the excuse brought by the Procurator of the Poor. Therefore it may be asserted that the Canon was not condemned for the pretended criminal knowledge, since the nature of the penalty well proves the nature of the crime, with which it should be commensurate, according to Deuteronomy 25: "According to the measure of one's sin shall be the manner of his stripes." [Citations.]

And therefore, since the pretended condemnation of Canon Capon-sacchi for criminal knowledge of Francesca Pompilia is excluded, the pretended notoriousness of the adultery resulting therefrom also falls to the ground. Neither can this notoriousness be alleged against her undefended. And just as public vengeance, which is to be decreed by a judge, can not be based lawfully upon it, so much less should private vengeance be considered excusable, when taken by the husband in murdering her after an interval. He is immune from the ordinary penalty for murder even according to the more merciful opinion only when the adultery is established by the very clearest proofs displayed in confession by the accused, or by a sentence given thereupon.

Likewise it would be superfluous to avoid the presumptions adduced by the Defense, especially by the Procurator of the Poor, to destroy the proof of adultery drawn therefrom; for this single response would be enough, namely, that these proofs were all gathered together in the

prosecution for Pompilia's flight made at the instance of Count Guido, he pressing hard to gain the dowry ⁴⁶ because of her adultery. And this was insisted on by the counsel for the Fisc, who wrote acutely upon these matters at that time. And yet, in the report of the cause these presumptions were not considered by the judges because of their irrelevance. This is evident from the lightness of the penalty ²⁷² decreed against the Canon. [clxxii] And so the examination of these can not be renewed after the Fisc has yielded and quietly acquiesced in the sentence, from which it could appeal if it considered itself wronged. Nor could Guido legitimately have recourse to such awful vengeance by his own hand. But lest some feature of the case may be left untouched, and that the justice of the decree may be more clearly asserted, I have taken the pains to confute these briefly.

And since, in the first place, the cause of flight is considered by the Defense in order that they may prove that the said flight was entirely illicit and was planned for easier criminal knowledge, the proofs brought for this purpose should be examined. The chief of these was drawn from the asserted letter of Francesca Pompilia,¹¹² written to Abate Franceschini. This makes pretense that her parents urged her to poison her husband, her brother, and her mother-in-law, to burn the home, and to return to the City with her lover. But one can not have a better refutation of this than the very tenor of that letter,¹¹² including matters that are so improbable, yes and indeed incredible, that it was rightly rejected by the judges. For who can be found so destitute and ignorant of filial love and duty as to make himself believe that a mere child, not more than fourteen years old [Citation], married away from her father's home, grieving bitterly for the departure of her parents, and wretchedly kept in the home of her husband, so that she was obliged to have recourse to ecclesiastic and laic authorities,^{135 139} could have written to her husband's brother (who was so unfeeling toward them), with a calm mind, of such base counsels and commands given by them, unless, as she ingenuously confesses, she was compelled by her husband to write it? ¹¹⁴ Nor could she, without great peril, refuse her husband, who was demanding this. Such an improbability alone is enough to thrill with horror those reading it, and well shows that she had written this not of her own accord, but under compulsion. [Citations.]

And, therefore, there is no need to examine whether the qualification added to her confession is probable,^{459 464} namely, that her husband had first marked the letters of the said epistle,¹¹⁴ which she had afterward inked by tracing them with a pen; because she did not know how to write.²³⁵ For possibly she shuddered to confess that she had written such matters, even under compulsion of fear [clxxiii], to the injury of her father and mother. Such fear is quite presumable in a wretched

wife of tender age, destitute of all help, away from her father's hearth and in her husband's home. [Citations.] Mogolon says that from the absence of relatives, the presumption of such fear may arise. [Citation.] And this is especially true after she had had recourse in vain to the authorities.^{135 139} Nor is a sufficient proof to the contrary deducible from Francesca's signature to the matrimonial contract, and from the letters that were said to have been written and sent by her in succession to the Canon, or else thrown from the window. [Citation.] For the very brief signature made in the marriage agreement does not show such skill in writing that with the same ease she could have written so long a letter, inasmuch as daily experience teaches that many are found who can scarcely write their own names.

Still less can the ability to write be said to be proved by the asserted love letters; for these were constantly denied by Pompilia. Nor can these letters be said to be sufficiently verified by the assertion of the said witness for the Fisc,⁵⁴ namely, that she threw from the window a note, which the Canon picked up and then departed. For aside from the fact that the witness stands alone and is of the basest condition, namely a dishonest harlot,¹⁷¹ and so unsuited for proving a matter [Citations], she neither affirms, nor can affirm, that the said letter was written by Francesca Pompilia. Likewise the letters found in the prison of Castelnuovo²⁸¹ might have been written by some stranger's hand. And even though they had been written by her, inasmuch as they are of a later date, they do not prove her skill in writing at some past time; for she could have acquired this skill afterward²⁴⁸ because of desperation which sharpened her wits, for the purpose of inducing the Canon to undertake the flight with her, so that she might escape the peril of imminent death. For in such matters as these, which are variable and can be changed, one can not well argue from the present to the past. [Citations.] And that in fact she did learn to write in Arezzo after the departure of her parents [clxxiv] is evident from her letter¹⁹ written in the prison of Castelnuovo, and found among her private papers after her death. This is given in the present Summary, No. 3. [Cf. p. clvi.]

The proofs of the abovesaid letter [to Abate Franceschini] drawn from the letters of the Governor of Arezzo, of the Reverend Bishop,¹⁴² and of Bartolomeo Albergotti, are so far from excluding the legitimate reason for flight given by herself and the Canon, during the prosecution, that they rather favor it. For although they criticized her for having such ill-advised recourse to them, they possibly did this to free themselves from censure for having thoughtlessly turned her away.¹³⁹ Therefore it is more probable that by them the minds of her cruel husband and of her mother-in-law, who was pitiless and implacable,⁴⁹ as experience teaches us, were exasperated all the more. Any one

may well know that Guido's mind was much more embittered after the lawsuit brought concerning the pretense of birth and the rescinding of the dowry contract,²⁶⁰ and after the publication of pamphlets¹⁰⁹ about the domestic scantiness and the base treatment which they had suffered in the home of the couple in Arezzo. His anger was also stirred by his jealous suspicion of the Canon (although Pompilia's love of the latter was merely pretended for the purpose of winning him) and by his exasperation, that increases the deadly hatred, which arises from a lawsuit about a considerable amount, and much more about an entire property. [Citations.] Such should the controversy about the pretense of birth be considered. Nor can the just fear of the luckless wife as to her deadly peril be denied. And driven to desperation in avoiding this, she might well have fled; for if it is permissible because of blows beyond mere legitimate correction [Citations] how much more permissible should it be considered, when the wife was continually afraid that he would kill her either with the sword¹³⁴ or by means of poison.¹³³ And, to avoid this, it was but prudent counsel for her to leave her husband and go back to her father's hearth.

It would indeed have been better if she had won her security by having recourse to the Right Reverend Bishop, in order that he might place her in some nunnery or with some honest matron; or to the Lord Governor, who would have considered her safety and the honor of her husband's family; or if she had fled in the company of someone connected with the household.¹⁴⁸ [clxxv] But the fear of imminent peril does not permit one to take better counsel, and especially a wretched wife of tender age, destitute of all aid and exposed to the fury of her husband and her mother-in-law. And still further, she might well fear that new recourse to them would be in vain, since she had found the former so useless. Nor could she find any better way of fleeing safely, wherein she thought lay the sole help for herself, than by using the help and company of the Canon, who had been proposed to her for this purpose by the Canon Conti³⁵ and by Signor Gregorio Guillichini,¹⁴⁸ relatives of her husband. It is incredible that they would have conspired against Guido's honor without the strongest and most urgent reason and without confidence in Caponsacchi's honesty and modesty. For one of them, namely Gregorio,¹⁴⁶ had offered himself as a companion for the journey and would have carried out his offer if his infirmity had permitted; as we read in the said letter¹⁹ of Francesca Pompilia found since her death and shown in our present Summary, No. 3 [cf. pp. clv-clvi], which refers to the same causes, of the infirmity of Gregorio and the imminent peril, which did not permit her to await his convalescence. And therefore she is worthy of excuse since she fled for dire necessity in company of the Canon, a man of modesty well known by her (as is likewise evident from another letter in the Summary of

our opponents, No. 7, letter 12, in which she calls him the chaste Joseph, and from the other letter, in which she commends him for his sense of shame). For if she chose this remedy under dire necessity, she should be excused according to the common axiom, "necessity knows no law." [Citations.]

Nor is an illegitimate cause of flight to be inferred because of the dishonest love with which Francesca Pompilia pursued the Canon in some of these letters.^{232 247} For although they seem amatory, yet they were ordained to the purpose of alluring this same Canon, in order that he might flee with her; since, without him, she knew that she could neither carry that out, nor even attempt it. Hence the letters can afford no proof of subsequent adultery. For although proof may result from love letters, according to the authorities adduced by the Defense in § *His praehibitis* [cf. p. cix], yet this is avoided [clxxvi], if the letters are directed to a permissible end, such as flight to escape deadly peril. For then, inasmuch as the end is permissible, the means are likewise so considered, even though these are not without suspicion; for they are not considered in themselves, but because of their end. [Citations.] Nor is the proof of adultery hitherto drawn from love letters so very strong unless they include the implicit confession of subsequent fornication. [Citations.]

The following consideration is especially urgent in leading to the belief that the luckless girl thought the Canon would conduct himself modestly during the journey. For in one of her letters she does not fail to take him to task (who had elsewhere been commended for honesty and modesty) because he had sent her questionable verses²⁵³ (present Summary, No. 4) [cf. p. clvi]: "I am surprised that you, who are so chaste, have composed and copied matters so immodest." And further on: "I do not want you to do in everything as you have done in these books; the first of them was so very nice, but these other octaves are quite the contrary. I can not believe that you, who were so honorable, would become so bold." From this sincere rebuke it is quite evident in what spirit these letters were written, even though they are filled with blandishments and proofs of love; for she shrank even from the dishonorable verses sent to her. Hence the letters should be understood according to the intention of the one writing them, just as one's words are. [Citations.]

And should not the supposition that the unfortunate wife had destroyed her matronly shame in the journey be therefore considered trivial and improbable? For she had quite enough to do to provide for her own safety by headlong flight. Nor is it probable that she was tempted by the Canon, since the love between them is proved merely by the said letters²⁴⁷ which were preparing for the flight. And these letters show her solicitude for his modesty and continence, since for the

mere sending of them she had made such complaint. For she feared lest he might become too bold, as is evident from details of the letter cited above. Nor are examples lacking of continence observed during a longer and easier journey, which had been undertaken [clxxvii] and completed by lovers, even though they might lawfully have indulged their love. Hence it is not improbable that the wretched girl kept herself scrupulously within bounds; for she was in deadly peril, which she hoped to avoid by precipitate flight.

The other proofs of this pretended adultery are far weaker, and were rightly ignored in the report of the case, both as regards the flight and as regards the decreeing of torment; for mutual love between her and the Canon can not be said to be sufficiently proved by the abovesaid letters; for they were preparatory to this prearranged flight.

The entry and egress ¹⁷⁰ to and from the home of Francesca by night is proved by a single base witness.¹⁷¹ Nor should even such entry be considered to be for a bad end, since it was in preparation for the flight. For when we have a permissible cause given, to which a matter may be referred, it should not be attributed to one that is illegitimate and criminal. [Citation.]

To this reason also should be referred her readiness in showing herself at the window by day and night at the hiss ¹⁷³ which gave signal that her pretended lover was passing. For since her love might be a mere matter of pretense for the purpose of winning him to give her help in the flight by affording her his company in the journey, these marks of love can be of no further import than the pretended love itself. The unfortunate wife employed it as a stratagem, indeed, that she might provide for her own safety. And so this response recurs: "If the end is lawful,¹⁷⁶ the means ordered toward carrying it out can not be condemned."

The pretended insidious manner of preparing for the flight and putting it into execution by means of an opiate ¹⁹⁶ administered to her husband and the servants (so far as it is proved and it was by no means proved in the Prosecution) affords indeed a proof of her flight, but not of adultery; for it was prearranged,¹⁹⁷ not for that purpose, but to escape deadly peril, to which the wife would have exposed herself, all too foolishly, unless she had made sure that her husband, who was lying in bed with her, was sound asleep, or unless she had contrived some such easy way.

The ardor shown in some of the letters ²⁴⁷ is indeed a sign of love, according to the word of the Poet: "Love is a thing full of solicitous fear." [Ovid, *Heroides* I, 12.] But since love was pretended for a legitimate end ²⁵² (as was said) [clxxviii] she could also make a show of ardor for feigning love, since it tended toward the same end of winning his good will, so that possessed of his true service she might

escape. Therefore, from this pretended love and these feigned signs of love, one can not argue that their departure together from the home of the husband and their association during a long journey gives proof of the pretended adultery; because even in true and mutual love continence has been observed, which is certainly more difficult.

Nor are the authorities adduced by the Defense in § *Accedit quod* [cf. p. cx] applicable; because that text has regard to a woman spending the night outside of her husband's home and against his will, without just and probable cause, as is evident from the words of the same. This decision is not applicable to our case, since the wretched Pompilia left her husband's home and went to her father's hearth that she might escape the deadly peril which she feared was threatening her. And so, since she did it for just and probable reason, the condemnation of the aforesaid text is turned away. And Farinacci so explains the assertion. [Citations.] "But it is otherwise if done for reason, because the mere spending of the night together does not of itself prove vice; for a case can be given where a wife spent the night with men, and yet did not break her marriage vow." [Citation.] Since this possibility is verified in our own case also, the proof of subsequent adultery can not be inferred from her flight and association with him in the journey, for the purpose of providing for her own safety.

Their mutual kissing on the journey,²⁰⁶ so far as it is proved, affords no light presumption of violated shame; but the proof of it is too uncertain; for it rests upon the word of a single base witness, who swears to matters that are quite improbable, namely that, while he was driving their carriage very rapidly, he saw Francesca Pompilia and the Canon kissing one another. How full of animus this deposition really may be is evident from this fact—that during the night he saw a momentary and fleeting deed, without giving any reason for his knowledge, such as that the moon was shining or that some artificial light afforded him the opportunity to see it. [Citations.] [clxxix] The improbability, or rather incredibility, is increased because, while the witness was intent on driving the carriage with such great speed as to seem like flying (as another witness testifies), how could he look backward and see their mutual kissing? Such an improbability would take away belief not merely from a single witness, but from many of them. [Citation.] Furthermore, there is the possibility²⁰⁹ to be considered that the jostling together of those sitting in the carriage might have happened from the high speed; and from this fact an overcurious witness might believe that they were kissing each other, although in fact the nearness of their heads and faces to one another might indeed be by mere chance, and not for the purpose of shameful and lustful kisses. Because whenever an act may be presumed to be for either a good or a bad end, the presumption of the evil end is always excluded. [Citations.] And so in the

said report of the prosecution for flight, this presumption was justly passed over because of lack of proof; nor would it have been rejected otherwise.

Nor can this improbable and prejudiced deposition of the said witness receive any support from the pretended letters,²⁴⁷ in which Francesca thanks him for the kisses sent, which she says would be dearer to her if they had been given by the Canon himself, and sends him back ten hundred thousand times as many. For it can not be thence inferred that if the opportunity were given their mutual kissing would follow, since these words were offered as serviceable and alluring for the purpose of winning him over; nor do they involve an obligation. [Citations.] And therefore they do not lead one to infer that they were carried out, especially since Francesca many and many a time warned the Canon to observe due modesty. And when she found that he had transgressed its limits by sending her dishonorable verses she abjured him not to become bold in urging his passion. This is far removed from impure desire to receive his kisses, which is formally stated in the said letter, as it is without any thought of injuring her matronly honor.

The use also of laic garb,²¹⁷ in which the Canon was found clothed, [clxxx] can afford no proof, because, as he is no priest, he can not be said to be forbidden to do so on a journey. And this was probably arranged in good faith to conceal himself and to avert scandal, which might be conceived at seeing a priest with a woman in the flower of her age¹⁶ and, as I have heard, of no small reputation for beauty, journeying without the company of another woman or servant. [Citation.] And so the authority of Matthæus Sanzius, etc., is not applicable, because in his case there was no concurrent cause on account of which the priest might approach with improper clothes and girded with arms; and he was found by the husband, either in the very act or in preparation thereto, and was killed on the spot. In such a case the proofs of adultery may well be admitted for the purpose of diminishing the penalty, and they were gathered by the same author to that end.

Their sleeping together²¹⁵ on the same bed, or at least in the same bedroom, at the inn of Castelnuovo, was not given consideration in the report of the prosecution for flight, because of defect of proof. This charge was indeed denied by Francesca Pompilia, and the Canon frankly confessed merely that he had rested for a little while on another bed in the same room. Nor ought a brief stay in that room be magnified to a crime, since it should be attributed to his guardianship²¹⁴ of the said Francesca, whom he was accompanying on the journey, and hence was under obligation to guard²¹⁴ her lest some evil might befall her. Whenever an act may be said to be done for a good purpose all suspicion of evil ceases. In these very circumstances Cravetta [Citation] says that the interpretation should tend toward lenience, even though the

harsher interpretation seems the more probable. Nor does it suffice as a full proof of adultery ¹⁷⁴ (if one is arguing a criminal case) that a young man be seen alone and naked with her, and that he be found locked in the bedroom with the wife, even though he have his shoes and clothing off; because these matters may be merely preparatory. And much less can proof of adultery arise from his brief stay in the same bedroom for the purpose of protecting her.²¹⁴

Nor can proof of their having slept together be drawn from the deposition of the servant of the same inn who asserted that he had been ordered to prepare only a single bed. For it does not [clxxxix] follow from this that both of them slept in it; but this was done because only Pompilia wished to rest a little while to refresh her strength,²¹⁸ which had been exhausted by the swiftness of the journey they had made. The Canon was keeping guard over her ²¹⁴ and preparing for the continuance of the journey; and so, when the husband arrived, he was attending to this by ordering that the carriage be made ready.²¹⁹ Hence no proof of their having slept together ²¹⁵ can result from this deposition, and it was justly rejected by the judges, so that it needs no further refutation.

And although Francesca Pompilia, in her cross-examination, tried to conceal a longer stay at the said inn by asserting that they had arrived there at dawn, yet no proof of adultery may be drawn from the said lie,²¹² for she made that assertion to avoid the suspicion of violated modesty, which might be conceived from a longer delay and more convenient opportunity. And so, inasmuch as her confession would have done her no harm, even if she had acknowledged it with circumstances leading to belief in the preservation of her sense of honor, neither can this lie injure her. [Citations.]

Since, for these reasons, the proof of the pretended adultery is excluded and almost utterly destroyed, no attention should be paid to the fact that Count Guido, in his confession, claims the mitigating circumstance of injured honor, as regards both his wife and his parents-in-law; and that this confession can not be divided for the purpose of inflicting the ordinary penalty. For authorities of great name are not lacking who affirm that a qualification to this end added to a confession ought to be rejected; and above the others is Bartolo [Citation], who proves this conclusion by many reasons, and responds to those given contrary [Citation], where it is said that a judge should not admit such qualified confession. [Citations.]

[clxxxii] Nor is such a plea of injured honor always in one's favor in avoiding the capital penalty, but only when vengeance is taken immediately; or after an interval, according to more lenient opinion, when the adultery is proved by condemnatory sentence or by confession.

But the reins of private vengeance would be relaxed far too much to the detriment of the state if, when proof of adultery were lacking, a stand could be made for the purpose of diminishing the penalty upon some qualification added by the defendant to his confession. Because in this way a witness might make a way of escape in his own cause, which is not permitted to anyone. [Citations.] And nothing more absurd⁵¹² can be thought of than that the burden of proof incumbent upon him for escaping the ordinary penalty might be discharged by the mere assertion of the defendant.

Nor should we admit the opinion that, even when the adultery is proved, a husband may kill, after an interval, an adulterous wife without incurring the capital penalty, since the weightiest authorities deny that. [Citations.] Bartolo, in distinguishing between real and personal injury, affirms that when injury is personal, it should be resented immediately; but if it be real it may be resented after an interval. [Citations.] And Gomez declares: "I hold the contrary opinion, indeed,⁵¹³ that a husband may be punished with the ordinary penalty of such a crime as murder; and for this reason he may not by any means be excused, because murder can not be committed to compensate for a crime or for its past essence, unless one kill in the act of flagrant crime," etc. [clxxxiii] And in subsequent numbers he responds to reasons given to the contrary. [Citation.] Gaill, after he says that murder committed for honor's sake is permissible, states that this exception should be understood to hold good if the injury be resented immediately, but that it is otherwise if done after an interval. In this case the retort is more like vengeance than the defense of honor, and the offender is held to account for the injuries. [Citation.]

Much less can it be claimed that the vengeance was taken immediately because the husband executed it as soon as possible, according to the authorities adduced by my Lord Advocate of the Poor [Citation], where he tries to show that since Guido was unarmed, or insufficiently armed (that is, he was girded only with a traveler's sword)²⁰⁴ he could not attack the wife accompanied by the Canon; for Caponsacchi, as he claims, is strong and bold,²⁰ and accustomed to sin in that way, and was carrying firearms.⁴⁷⁰ And the wife showed herself ready to die in the defense of her lover; for it is said still further that the wife rushed upon Guido with drawn sword,²²⁷ and was about to kill him, if she had not been checked by the police officers. But the opportunity to kill an adulteress is not to be so taken that a violent death may be visited upon her with all security and without any risk. For every legal opinion giving excuse for diminishing the penalty shrinks from this. For such diminution of the capital penalty follows because of the violence of sudden anger, which compels the husband to neglect the risk to his own life, that he may avenge the injury done him by the adultery. And so

this first opportunity, as spoken of by the authorities, in order that murder may be said to be committed immediately, should be understood to be whenever an occasion first offers itself, in excusing the delay in taking vengeance either because of absence or for some other just reason. Such is the fact in the case about which Matthæus Sanfelicius writes, *contr.* 12. For in that case the adultery was committed in the absence of the husband, and the wife had run away, so that he could not have avenged himself earlier, as is evident from the narrative of fact given in *No.* 1, and *No.* 28 established this conclusion: "So they are excused if they take vengeance as soon as possible, since it then seems that they killed incontinently."

But who can say in our case that the husband took the first [clxxxiv] chance, since when he found his wife in the very act of flight, at the tavern of Castelnuovo, he abstained from vengeance with his own hand, and turned to legal vengeance, to which he had always clung.²²² And indeed he charges himself with the worst baseness when he asserts that he was unequal to the task of taking vengeance because of the fierce nature of the Canon;²⁹ since, when the latter had been arrested, Guido could have rushed upon his wife. Nor ought the kind of arms they carried to have alarmed him, because, according to the description made in the prosecution, it is apparent that the Canon was wearing only a sword.²²¹ And so they were provided with like arms. He would not have taken such care of his own safety if he had been driven to taking vengeance by the stings of his honor²²³ that needed reparation, even at some risk to himself. For just anger knows no moderation. And he should lay the blame on himself if, alone and insufficiently armed, he had followed up his wife, who was fleeing, as he might fear, with a strong and better-armed lover. His very manner of following her proves the more strongly that his mind had turned toward legal vengeance, for the purpose of winning the coveted dowry,⁴⁶ rather than to vengeance with his own hand for recovering his honor.²²³ For facts well show that such was his thought. [Citations.]

Likewise the delay of the vengeance after the return of the wife to her father's home excludes the pretended qualification that the vengeance was taken "immediately," because he could not put it into execution sooner. For the return home took place on October 12,²⁸⁴ of last year, and the murder was not committed till the second of January³¹⁹ of this year. And we should rather assert that he was waiting for her confinement,³⁰⁷ which took place on December 18,²⁹⁹ in order that he might make safe the succession to the property, for which he was eagerly gaping;⁴⁶ because he immediately put into effect his depraved plan by destroying his wife and her parents with an awful murder; from a comparison of these dates it will be easy to see this. Hence, it is evident with what purpose he committed the murders, and whether

this vengeance for the asserted reparation of his injured honor may be said to have been undertaken "immediately," that is, as soon as opportunity was given, according to the authorities adduced on the other side.

Then when he had chosen legal vengeance by the imprisonment of the wife and of the pretended lover, and by the prosecution of the criminal cause, it was not permissible [clxxxv] for him to go back to vengeance with his own hand; and in taking that he can not be said to have taken vengeance immediately. He also violated public justice and the majesty of the Prince ⁴²⁰ himself. This single circumstance greatly exasperates the penalty and increases the crime. [Citations.]

[But the above is true] in spite of the fact that the conclusions adduced by the Advocate of the Poor (in § *Et tantum abest*) [cf. p. cxxxii] may be applicable, and likewise the authorities approving those conclusions, on the ground that it is not presumable that the husband has remitted the injury, but rather that his desire to avenge himself has continued; and that this excludes the charge of treachery, even though the husband use trickery in taking vengeance. Because in the present case the question is not as to the nature of the murder, from which it might be claimed to have been treacherous. The husband indeed did not conceal his injury, but rather laid it bare by turning to legal vengeance. Although this is possibly less honorable, yet since it was pleasing to him, for the purpose of gaining the dowry,⁴⁶ he could not when frustrated in this hope, because the adultery was unproved, take up again the vengeance with his own hand. And this is true, even though he pretends as an excuse for his delay that he could not accomplish it sooner. For since the delay and hindrance arose from his own act, he could not take therefrom the protection of an excuse. [Citations.]

But, however he might find excuse for the barbarous slaughter of his wife while under the authority of the judge ⁴¹⁹ at the instance and delivery of her husband, certainly the murder of Pietro and Violante ⁴⁰¹ should be considered utterly inexcusable. In his confession he has tried to apply to them also his plea of injured honor, because of their pretended complicity in urging the flight of his wife and in her asserted dishonor. Yet no proof of this qualification can be brought, nor did the slightest shadow of it result from the prosecution for flight. And this is proved to be improbable, and utterly incredible, from merely considering the fact that Abate Franceschini,²⁸⁸ brother of the accused and confessed defendant, would not have consented that she be committed to their custody if he had had [clxxxvi] even the slightest suspicion of their complicity, since he so keenly desired the reparation of their honor. This fact, which was plainly confessed in an instrument prepared in the statement of fact in the Italian language [Pamphlet 10] and very stoutly denied by the Procurator of the Poor, was ad-

mitted by his own wonderful ingenuity in denying merely that notice had reached the husband, or in claiming that the Fisc could pretend to no more than mere presumptive knowledge in Guido.

But, still further, such knowledge is quite probable and is drawn from strong proof. For it is very probable that Guido was informed by his brother of his wife's departure from the Monastery, of her establishment in the said home, of the obligation ²⁸⁷ assumed by her parents to provide her with food, and especially of her detected pregnancy. [Citation.] But we are not now arguing to prove the husband's knowledge thereof, but to draw from that consent of Abate Paolo a proof which would exclude the pretended complicity of Pietro and Violante in the dishonor of the wife, which latter is by no means proved.

So far is such complicity from being proved as regards Pietro, that the very contrary is quite evident from his will, made in 1695, after litigation had been instituted about Pompilia's pretended birth. In this will, notwithstanding the litigation, in the first place he leaves as his usufructuary heir Violante his wife, and, after her death, Francesca Pompilia, laying upon her the obligation to dwell in the City and to live honorably. This is evident from the details of the said will given in our present Summary, No. 5. [Cf. pp. clvi-clvii.] In this he also asserts that she had thus far conducted herself honorably, and he claimed to leave the annuity to her because of her good manner of life. And so it becomes still further incredible that he, while alive, was willing to conspire in her dishonor, from which he shrank even when dead. For the income was to be taken from her if she should live a dishonest life, and he urged her in case her marriage were dissolved to assume a religious dress, and he left her a fat legacy to that end.

Nor can it afford any proof of this pretended complicity that when Guido had made pretense of delivering a letter sent to them from the Canon,³²¹ the doors were immediately opened by Violante ³²³ [clxxxvii] to the assassins. The attorneys for the Defense try to argue from this ready credulity that the name of the lover was not hateful to Violante, and that hence his intimacy with Francesca was not displeasing. But since the Canon was the author of her liberation from deadly peril by bringing her from her husband's home to her father's hearth at the neglect of his own risk, it should not seem wonderful that Violante should give proof of a grateful mind for the help given her daughter and should open the door. Nor can one infer therefrom consent in unchastity, from which their past acquaintance had been entirely free. Much more is this so at a time when he himself was absent and in banishment at Civita Vecchia.

Therefore the true cause, on account of which the Comparini also were murdered, could be no other than the hatred with which the husband had been aflame; [and this first of all was] because of the law-

suit ⁴²¹ concerning the supposed birth, which they had brought, and which had deceived him in his hope of gaining a fat dowry and inheritance; [and second], his desire for vengeance because of the pamphlets ¹⁰⁹ distributed at the time of the said lawsuit, and which had exposed the meagerness of the home comforts and the wretched treatment they had received in the home of the husband. These two do not excuse Guido from the penalty for premeditated murder, and indeed increase it, even raising it to the crime of *læsa majestas*,⁴²⁰ according to the well-known order of the Constitution of Alexander, as was proved in our past information, § *Accedit ad exasperandam*. [Cf. p. lxxviii.]

To escape the penalty assigned thereto by the disposition of this decree, in vain does he turn to an excuse drawn from supervening provocation. [Citation.] But so far as it is claimed that this crime resulted from the counsel they gave toward her flight, and their complicity in the same, the proof of such complicity is entirely drawn from the asserted letter,¹¹² written by Francesca Pompilia to Abate Franceschini. But this letter has been completely rejected, and even spurned by Guido himself, since in the prosecution for flight we find no insistence was made that action should be entered against Pietro and Violante for their pretended instigation. Pietro, moreover, had long ago broken off the lawsuit brought as regards the pretended birth ²⁶² and the revocation of the dowry contract, and so this complicity can not be made to seem the sole provoking cause, which would exclude *causa litis*. For such a cause should be true and not pretended, and should be in accord with the crime committed. [Citations.] [clxxxviii] These excuses, indeed, which are claimed to be drawn from complicity in the asserted dishonor, are still further excluded by lack of proof, both of the impurity and of their connivance therein; and so the provocation implied therefrom is shown to be entirely irrelevant, and possibly fraudulent.

The other suit for divorce,²⁶⁶ brought in the name of Francesca Pompilia, it is vainly claimed is made void because of the asserted invalidity of the summons; for this summons was executed against Abate Franceschini, who lacked the authority of a proxy. Yet his authorization was quite full enough for a lawsuit, as is evident from its tenor as given in our present Summary, No. 6 [cf. p. clvii], and accordingly when a suit was brought it was ample for receiving a summons. [Citation.] We are also dealing with the conditions of the Constitution of Alexander and of the order of the Banns given against those who commit offense on account of lawsuits. Hence the reply is not relevant, which is given by the Procurator of the Poor in § *Quae etiam aptantur* [cf. p. cxviii], that when the dishonesty of the wife is established her impunity from the wrath of her husband, who would take vengeance, should not be permitted by the introduction of a divorce suit. Nor can such murder be said to be committed for the reparation of honor when

committed in anger at a lawsuit. For he takes for granted as proved, what is in question, namely, the dishonor of the wife, the proof of which is quite lacking. And Guido might have proceeded to such an extreme if, as soon as the adultery was committed, his wife brought a suit for divorce; but it is otherwise since he tried that revenge after the way of legal vengeance had been chosen by bringing criminal charge for the pretended adultery and for the purpose of winning the dowry.⁴⁶ For after he was frustrated in this hope (since no proofs of adultery resulted from the prosecution), and after her husband's mind had been exasperated, she ought to be permitted to provide for her own safety by begging for the remedy of divorce. And while such judgment is pending any murder inflicted upon her ought surely to be expiated by the penalties inflicted under the sanction of the Alexandrian Constitution and of the Banns. For the provision of this decree is applicable, since the murder was committed while the criminal cause, brought against her by her husband, for pretended adultery,²⁶⁹ was still pending. And this decree includes both civil and criminal suits, as is evident from reading it.

[clxxxix] Likewise the assembling of armed men,⁴⁰⁹ and their introduction into the City for accomplishing more safely the murder of the entire family, increases the crime to *læsa majestas*,⁴²⁰ and also necessitates the increasing of the punishment, as was affirmed in our former information. Nor is this avoided by the replies given, or rather repeated, by the Defense, and especially by the response that since the principal offense was committed for honor's sake (and hence the ordinary penalty of the *Lex Cornelia de Sicariis* has no application for that reason), so likewise the penalty for assembling men, imposed by the Apostolic Constitutions and the General Banns, can not be inflicted; for the latter is included with the penalty for the principal offense, which alone is to be attended, since the spirit and purpose make differences in crimes. [Citations.] Because the order of the said Constitution and Banns would prove utterly vain if the penalty for assemblage should cease, whenever the assembly were made for the purpose of committing some crime that is punishable with a milder penalty. [Citation.] This Bull indeed is applicable even when men are called to arms in a permissible cause and in good faith;⁴¹¹ because by it the Supreme Pontiff wished to provide for the public security and to restrain the audacity of those laying down the law for themselves. Hence all the more shall it have place when the assembly may be made for an evil end, namely for committing crime, even though the crime may not deserve the ordinary death penalty, and when the crime actually follows. [Citation.] Spada gives this reason, that the Pontiff in establishing this Constitution considered only the uproar and other ills which are accus-

tomed to arise from the assembling of armed men to the injury of the public peace. And although his opinion was rejected by the authorities adduced by his Honor, the Advocate of the Poor, in § *non refragante* [cf. p. cxxxv], this refutation does not apply to the assembling of armed men to an evil end (even though this end is not so criminal that the death penalty may be inflicted), but to their assemblage for a permitted cause of regaining possession immediately, by meeting force with force. Even in this latter case Spada holds that there is place for the order of the Bull. Hence the refutation given above does not prevent the application of the provision of the abovesaid Constitution to our case, since the assembling was prearranged for the murder of an entire family, which was put into execution with reckless daring.

[cxc] Nor may the opinions of the said judges of the Sacred Rota, requiring that the assemblage be directed against the Prince or the State, and not to commit some other crime, stand in the way; because if this qualification were accepted as true, the decree would be vain which had raised the act to the crime of *lesa majestas*⁴²⁰ and rebellion; for this crime would result plainly enough from the deed itself, and from the intent to disturb the peace of the Prince and the State. And so far as the opinion affirmed by these authorities does have foundation, it can be applied when we investigate the order of the Constitution, and not of the Banns issued later. For this decree would prove vain and useless if the capital penalty, imposed thereby against those assembling armed men, could be applied only when the crime for which the assembly had been made was punishable by the same penalty; and even if this necessity be admitted, the application of the Constitution can not be avoided, because no plea of injured honor can be alleged in excuse for the murder of Pietro and Violante, and it had not at all been proved as regards Francesca Pompilia.

Likewise the preparation and the use of prohibited arms⁴¹⁸ is also punishable with the capital penalty, if we investigate the order of the Banns and Constitutions of Alexander VIII, of sacred memory. Nor is this sufficiently avoided by the response given by the Defense that it is included in the main offense; so that no greater penalty can be inflicted for it than the main crime itself deserves. For what we have said above as regards "an assembling" is opposed to such a confusing of the punishment of the Banns, and the authorities adduced in our past response, § *nec delationis* [cf. p. cc] affirm the contrary. And those authorities cited for the contrary opinion should be understood to apply only when one is dealing with an insult, or with murder committed in a quarrel, or in self-defense, or for the sake of immediate reparation of honor. [Citation.] The difficulty is at an end in our case, because of the clear disposition of the Banns, which expressly declare and com-

mand that the penalty for the carrying of arms is not to be confounded with the penalty of the crime committed therewith. Nor does the response given by the Procurator of the Poor seem strong enough to avoid this; namely that when, under the common law, the Banns receive only a passive interpretation, merely the crime of preparing and bearing arms for committing murder is considered; but that it is otherwise if the arms are borne, [cxci] for no ill end, and then a crime is committed with them. Because it would be too harsh for one bearing arms for no ill end and then sinning with them, to suffer a greater penalty than one preparing arms to commit crime, and carrying his purpose into effect. Hence these Banns never can receive such an interpretation. For since by them the carrying of arms is forbidden as pernicious and as affording occasion to commit crime, much more should the bearing of them when purposed for committing crime be considered prohibited and punishable with a rigorous penalty. This is especially true when we consider the declaration that the crimes are not to be confounded with one another.

There is left, finally, one other qualification, which greatly aggravates the crime, namely the violating of the home assigned as a prison ⁴¹⁹ with the consent of Abate Franceschini.²⁸⁸ And this is so in spite of what can be alleged as to Guido's ignorance of this circumstance. Because in the said writing prepared in Italian for giving true notice of the fact [Pamphlet 10], it is asserted that the entire management of the cause was left and committed to this same brother,²⁵⁶ since Guido had left the City. Hence it is quite incredible that Guido was not informed by him of so important a matter. And as concerning the distinction between violating a public prison and mere custody in a home under bond, and as to offense permitted therein for honor's sake, we have given sufficient response in our past argument § *Quibus accedit* [cf. p. ccii] and those following. For the same reasoning is applicable in both cases, since in both the person detained is under the protection of the Prince whose majesty is accordingly insulted. And the excuse would hold good if we were arguing about the resenting of an injury offered in prison. Under these very circumstances do those authorities adduced by the Defense speak, as is evident from their recognition of them.

Therefore, in the present case many grave qualifications are present, which increase the crime, and on account of these his Honor, the Advocate of the Poor, admits in § *Agnoscit Fiscus* [cf. p. cxxxiv] that the penalty should be increased. Nor can such increase of penalty be made good except by death. For even if the adultery were proved, as it is not proved in our case, the mere murder of the wife, when committed after an interval, could demand only a diminution of penalty, according

to the more lenient opinion. Hence the justice of the decree for the torment of the vigil should be said to be sufficiently asserted and vindicated against opposing reasons. And now [cxcii] that confession has followed, there remains only that condign punishment be inflicted in expiation of this awful crime.

GIOVANNI BATTISTA BOTTINI,
Advocate of the Fisc,
and of the Reverend Apostolic Chamber.

[cxciii is blank in original.]

[cxciv] [File-title of Pamphlet 13.]

*By the Most Illustrious and Most Reverend
 Lord Governor of the City in
 Criminal Cases:*

Roman Murder-case with qualifying circumstance.

*For the Fisc, against Count Guido Franceschini
 and his Associates.*

*A reply in matters of law, by the Lord Advocate
 of the Fisc.*

At Rome, in the type of the Reverend Apostolic Chamber, 1698.

[cxcv]

Romana Homicidiorum cum qualitate.

[Pamphlet 14.]

Most Illustrious Lord:

The matters deduced by his Honor, the Advocate of the Poor, for the defense of Guido Franceschini, who is accused of three murders with very grave qualifications which magnify the same, are of no real force in proving [first] that he should not be punished with the ordinary penalty of the *Lex Cornelia de Sicariis*, inasmuch as he had confessed these crimes, and [secondly] that simple torture only should be demanded for gaining the truth as to these, and that the torment of the vigil⁵¹⁸ should be omitted. I will attempt to show this, in responding to these points singly, so far as the excessive scantiness of time admits, and will keep my eyes on the rights of the Fisc, as the duty of my office and the dire atrocity and inhumanity of the crime demand.

The chief ground taken by my Lord consists in placing on an equality [first] a case of vengeance taken immediately by the husband with the death of the adulteress found in her sin, and [second] that of one slain after an interval when the wife is plainly convicted of adultery (as he claims is proven in our case). But this falls to the ground both in fact and in law; and hence the inference for the moderation of the penalty drawn from this same parity is likewise shown to be without foundation.

In fact, the proof of the pretended adultery is quite deficient according to what I deduced fully in my other information. In that, I have confuted singly his proofs, or rather suspicions, resulting from the prosecution, to which his Honor attaches himself. I have shown that the wife's flight in company with Canon Caponsacchi, the pretended lover, was for a legitimate reason (namely the imminent and deadly peril, which she feared), and not from the illicit impulse of lust. The participation and complicity of the Canon Conti and Signor Gregorio Guillichini,¹⁴⁶ relatives of the Accused, in forwarding the same, ought to prove this. For they would not have furnished aid if she were running away for the evil purpose of violating her conjugal faith, even to their own dishonor. But they well knew the necessity of the remedy, and that it was to free her from peril. And a witness for the prosecution⁵⁴ in the same trial for flight swore to having heard this from Signor Gregorio. And they gave their aid in carrying this out.

Nor is it at all relevant that, in the decree in condemnation of the same [cxcvi] Canon to banishment in Civita Vecchia,²⁷¹ the title of "carnal cognition" was written down; because, as was formerly responded, the alteration of that was demanded, and likewise the substi-

tution of a general title relative to the trial. And since no proofs of it resulted either from the prosecution or from the defenses which the unfortunate wife (who was dismissed with the mere precaution of keeping her home as a prison) could have made, if she had not been so horribly murdered, and since the said decree, issued without her having been summoned or heard, would be void, the inscription made by the judge in the records as a title could not convict her of that crime; but only the truth of the fact resulting from the proofs should be considered. [Citations.]

I acknowledge ⁴⁰³ that the Accused should have been considered worthy of some excuse if he had slain his wife in the act of taking her in flight with the pretended lover; since for this purpose, not merely the absolute proof, but the mere suspicion of adultery committed, would be enough. [Citation.] But when, after neglecting the pretended right of private vengeance, he sought out with entreaty public vengeance, by having her arrested,²²² he could not thereafter, while she was under the public authority of the judge, take private vengeance by butchering her who had no fear of such a thing. The suspicion of a just grievance, which is difficult to restrain when aroused, excuses the husband in part, if not entirely, whenever he takes vengeance immediately under the headlong impetus of anger. But when the vengeance is after an interval, and while the cause is in the hands of the judge, and the victim is imprisoned at his own instance, this does not hold good, as will be proved further on, by showing the irrelevance of the principle assumed.

Nor does the Glossa in the alleged text, in the law of Emperor Hadrian, stand in the way; because it speaks of a son taken by his father in flagrant adultery with his stepmother, and killed by the father immediately. [Citation.] And there is a wide difference between a father and a husband killing after an interval; because, as Farinacci adds, a father has the greatest authority over his son, and by ancient law could even kill him. And certainly the husband does not have this. [cxvii] The law also more readily excuses a father,⁴⁰³ because he is always supposed to take good counsel for his child, from the mere instinct of paternal love. But one does not have this same confidence as regards a husband, who is accustomed to conceive unjust suspicion of his wife more readily. Hence it is not permitted that he kill her on mere suspicion after an interval. Nor is he in any way to be excused on this account, according to the text. [Citation.] "The devotion of a father's love usually takes good counsel for his own children, but the hot precipitancy of a furious husband should readily be restrained." [Citation.]

This is so far true that a father is not excused unless he kill, or at least severely wound, his daughter along with the adulterer; so that it

should be attributed to fate, rather than to paternal indulgence, that she escape death. And this has been passed by law-makers for no other reason than that such a grievance, provoking to rash anger, is required for excusing a father, so that he may not spare his own daughter. But since this statute is not to be found among the laws about husbands, the manifest difference between the two, because of the husband's excessive readiness to seize a suspicion and fly into a rage against his wife, is plainly revealed.

Nor is mere suspicion a sufficient ground to diminish the penalty for a husband who kills his wife after an interval. This is evident from the very authorities excusing him in such a case, whenever the adultery is proved either by the confession of the wife or by other proofs, so that she can be said to be convicted of it. [Citations.] Bertazzolus says: "I have seen the matter so regarded in the contingency of such a fact, and the husband has been excused who had killed an adulterous wife, not found in the very act, but whose adultery was really and truly existent and was quite plainly proved." Hence it is plain, from these very authorities adduced by his Honor, that the husband who kills his wife after an interval is not excused because of mere suspicion, or because of an adultery case which is still pending judgment, and which he himself had brought.

[cxcviii] In law, also, is his assumption proved to be without foundation, which places on an equality [first] vengeance taken immediately, that is, in the very act of taking the wife in adultery, or in acts immediately preparatory, which lead him to such a legitimate belief; and [secondly] vengeance taken after an interval, even when the adultery is evident from such proofs as render it perfectly clear. There are many authorities who urge the diminution of the penalty for the following reason which they give—that the sense of injured honor always keeps urging and provoking to vengeance, and that a wife may be well enough said to be taken in adultery when she has either confessed it or been convicted of it. And these authorities have been collected with a full hand by his Honor, and I myself recently pointed out one of them. But the contrary opinion is the true one and is accepted in practice. To this fact the most distinguished and most skilful practitioners of our time in criminal law bear witness. These are [first] Farinacci, where, after he has first learnedly answered the reasons and authorities adduced to the contrary, he concludes that he undoubtedly believes so as to the law in the case, and counsels that it be so held, unless we wish to err; and [second] Canon Raynaldus, who also filled the office of Procurator of the Poor with the highest praise, and so it may well be believed that he was very strongly inclined toward mercy and commiseration, and that he therefore adhered to this opinion in the mere zeal for the truth. And he declared it to be the truer and the

more advantageous to the State, and said that one should not depart from it in giving judgment. [Citations.]

But even if the conflict of authorities might in some manner favor the diminishing of the penalty for the Accused, if there had been excess merely in the matter of time; yet he is still to be considered as inexcusable, so that he can not escape the ordinary penalty, since so many qualifying circumstances are present which increase the crime; and any one of these is punishable with death.

To this end we should first consider the assembling of armed men,⁴⁰⁹ which is so very injurious to the public peace, and constitutes the crime of "conventicle." In the Banns, chapter 82, this is punishable with the death of its author. It is also declared that it is enough to establish this crime if four⁴¹⁰ armed men are assembled. This had been formerly [cxcix] prohibited under the same penalty by the seventy-fifth Constitution of Sixtus V, of blessed memory, which had raised it to the crime of rebellion, for whatever reason it might be done. Spada proves this fully, asserting that it should generally be so understood in all cases in which the assembling of men has been prohibited.

To escape or evade this capital penalty, it is not a relevant excuse that a husband may kill an adulterous wife by armed men brought together. For, however it may be when a husband wishes to kill his wife taken in adultery, and is afraid that the armed adulterer can resist him, and that he may have servants for his aid (in which case he himself can not take vengeance otherwise than by calling together helpers, as Caballus advises); yet in the case of vengeance taken after an interval, and while the wife is under the power of the judge,⁴¹⁹ and on the mere suspicion of adultery, such convocation of armed men can not be said to be at all permissible. For the seventy-fifth Constitution of Sixtus V, of blessed memory, prohibits such assembling even on lawful occasion, as a disturbance of the public peace. [Citation.] And so it is much more to be prohibited and much the rather to be expiated with the ordinary penalty both of the Constitution and of the Banns, since it was made for an illegal and damnable end, namely to kill his wife, and his father-in-law and mother-in-law along with her. This is rendered plain by the assertion of the very authorities who excuse from the ordinary penalty a husband who takes vengeance after an interval. And indeed the path of private vengeance, which is hateful to the law, would be strewn all too broadly if, after the husband had chosen legal vengeance²²² and had neglected to avenge his pretended injury in the act of seizing his wife in flight with the pretended lover, he should be excusable in taking vengeance after an interval with all security, by means of armed men, and in killing her while entirely off her guard, and under the power of the judge, without the slightest risk to himself.

This is true in spite of the response which might favor him, that he neglected to take private vengeance because he was unarmed, and the wife was found in the company of the Canon, who was a bold, sturdy man.²⁹ The husband should impute it to himself if alone and unarmed he was pursuing his wife, fleeing with the lover. For then he could take associates with better right, and [cc] fully armed could pursue her; and in such a case his assembling of men would be somewhat excusable. But this is not so when he takes such awful vengeance after an interval. For if we consider the reason why a husband killing an adulterer or his wife is punished with a milder penalty according to the quality of the persons, if the vengeance follow on the very act—namely, rash anger, which can not be restrained—the assembling of armed men to do that after an interval is plainly revealed to be illegal. For rash anger would cause him to expose himself to the risk of resistance by the adulterer, who is not accustomed to approach unarmed. Because of this risk the penalty is diminished, since it shows that the husband carelessly exposed himself thereto, because of the violence of the anger which blinded him. This is [not] the case in vengeance taken after an interval, taken with all forethought and by means of armed men, so that the husband can not be afraid that any evil will befall himself in carrying it out. Such preparation is quite repugnant to rash anger, which can not be restrained, and from which excuse is drawn. [Citation.]

The second qualification that increases the crime results from the kind of arms⁴¹³ with which the murder was committed, for these were prohibited by the well-known decree of Alexander VIII, of sacred memory. This was not merely for the carrying, but even for the keeping, introduction, or manufacture of them for any cause whatever, even under the pretext of military service or the execution of justice. Hence they would be all the more prohibited [when carried] for the purpose of taking such impious and awful vengeance by the destruction of an entire family.

Nor is the carrying of arms in such a case to be confused with the main crime of murder; because when a greater penalty might be imposed for the former, as when excuse for the killing is drawn from injured honor, the carrying of the prohibited arms comes to be punished with the ordinary penalty. [Citations.] Nor are the authorities adduced to the contrary worthy of attention, for they hold good in the circumstance of murder done in self-defense or because of provocation in a quarrel. [Citation.] Still further, these are not applicable because they do not speak within the bounds of the Constitution, which so distinctly [cci] prohibits such arms. For Policardus speaks of the *Regula Pragmatica* which takes for granted the qualifying circumstance of the crime of treachery from the kind of arms, and he asserts that

this order ceases in murder for self-defense, or on provocation in a quarrel, when committed with the said arms. But this judgment differs by the whole heaven from the sanction of our Constitution; because the latter was issued for the very purpose of entirely exterminating so pernicious a kind of arms.

The third qualification likewise increasing the crime is murder committed because of a lawsuit;⁴²¹ for by the well-known decree of Alexander VII, of blessed memory, this was increased to the crime of rebellion and *læsa majestas*,⁴²⁰ punishable with death and the confiscation of goods. This qualifying circumstance as regards the slaughter of Pietro and Violante can not be denied; because the Accused had won a victory²⁶³ in the lawsuit. And hence the offense should [not] be said to have been committed because of just anger for injury inflicted upon him; [first] by the pretense of birth, which was revealed after the marriage had been celebrated, in order that they might break the marriage contract; [second] by the publication of pamphlets¹⁰⁹ greatly to his injury; and [third] by their conspiracy in the flight of his wife to the injury of the honor of the Accused and of his entire family. They claim that since this cause for avenging the injury is graver than that arising from the lawsuit, the murder should be attributed to it, as more proportionate thereto.

But the victory²⁶³ he obtained had regard only to the actual possession of the property while the lawsuit was under appeal.²⁶⁴ And the parents were still pursuing this suit,²⁶⁵ so that that cause continued and could not be said to be extinct. The injury, indeed, from whatever different causes it may be claimed to have arisen, really came from this same lawsuit. And this had regard both to the pretense of birth revealed, and to the insults contained in those pamphlets¹⁰⁹ concerning the meagerness of the family affairs (which was quite the contrary of the boasted riches, in the hope of which the marriage had been made), and concerning the ill-treatment which the parents of the wife had suffered in the home of the Accused. For by this marriage agreement food was to be furnished them.⁹³ Still further, as to any conspiracy in her flight, much less as to any complicity in her pretended adultery, we have no proof at all. And so the cause of hatred conceived because of the lawsuit kept always urging him, and it does not redeem the criminal from the penalty inflicted by the decree of Alexander, because the suit might have been injurious to the Accused, either in his substance or in the manner. For this indeed presents such a cause as is always required in [ccii] premeditated murders. Nor does it exclude the qualifying circumstance of the lawsuit, and indeed confirms it; since it is explicitly presupposed that injustice had been committed. Otherwise an opportunity to take private vengeance would be permitted, which in all law is forbidden, especially when a lawsuit is going on; because then the

majesty of the Prince ⁴²⁰ is insulted, as was proved in my other information, § *Accedit ad exasperandum*. [Cf. p. lxxviii.]

The fourth and, indeed, a very grave qualifying circumstance is drawn from the place in which the crime was committed, namely in the home ⁴¹⁷ of those slain. It was also in an insidious manner, by pretending the delivery of a letter sent by Canon Caponsacchi.³²¹ For one's home should be the safest of refuges to himself, as was proved in our other information, § *plurimum quoque*. [Cf. p. lxxix.] The manner indeed savors of treachery, as is proved not merely by committing murder under the show of friendship, but also at a time when the power and obligation of special caution in the one slain had ceased. [Citation.] And this is far from doubtful in our case, for the wretched parents could have had no such apprehension from the Accused, who was staying in his own country.

To these is added a fifth very grave qualifying circumstance, drawn from the place with respect to the very wretched wife. For she had been imprisoned at the instance of the Accused, and was detained in the home of her parents as a prison with the consent of the Abate,²⁸⁸ his brother; and hence she was under public safekeeping,⁴¹⁹ which it were wrong for the Accused to violate without incurring the penalty of *lesa majestas*. [Citation.]

This very grave qualifying circumstance, which increases the crime, can not be avoided by the dual response given by his Honor; first, that we are dealing with no prison properly speaking; second, that one giving offense, or killing in prison, is excused on a just plea of injured honor. Neither of these excludes this qualifying crime; for the unsuitability of a prison would be considerable if we could defend a violation of it made by one in prison and so to avoid his own injury, but if it were otherwise when we were arguing in his favor for avenging an injury to himself in a home [cciii] assigned as a prison.²⁸⁰ The plea of injured honor can help one only if the offense in prison follow in self-defense under the very impulse of rash anger. In such circumstances the authorities adduced by his honor would hold good. But this is not so in excusing vengeance taken after an interval upon one imprisoned even at the instance of the slayer. For then the qualifying circumstance of the place greatly aggravates the crime, as it is indeed injurious to the public safekeeping and involves treachery. [Citations.]

It is therefore very evident that the murders committed by the Accused have many qualifications mingled with them, which greatly magnify them. And however far the opinion has weight, which urges the diminution of punishment for one killing an adulteress after an interval, and however much the pretended adultery may be declared to have been proved in the manner required to gain such diminution, even by all those in favor of the milder judgment, still this penalty

because of these qualifications would have to be increased and the ordinary penalty of the *Lex Cornelia de Sicariis* in its entirety would have to be demanded. And therefore it seems superfluous to argue about the kind of torture, since in view of these very urgent proofs, of which I understand there is no doubt, and in view of the well-known powers granted to the Most Illustrious Governor, it is quite within limits that the crime should be punished with the ordinary penalty, even if the qualifying circumstance of special atrocity were not present, so that the penalty should not be increased on that account.

But such a qualifying circumstance is not wanting here, as it results indeed from the treacherous manner and from the charge of *lasa majestas*,⁴²⁰ which is provable in our case on three grounds; namely offense committed during a lawsuit, the assembling of armed men, and the violation of public safekeeping, because of the home assigned as a prison. For according to the Apostolic Constitutions, the crime would be raised to that degree upon the basis of the first and the second; and there should be no doubt as to the power of the Prince to do so. [Citation.] Spada asserts that in such a case, so far as all the effects of law are concerned, it should not be considered a matter of controversy that the qualification of special atrocity, which is in agreement with such a crime, is to be revoked. And in our very [cciv] circumstances Spada gives this opinion in demanding the torment of the vigil.

Nor can that qualifying circumstance of the person concerned, so far as it is proved, stand in the way of such infliction of the torment of the vigil, which does not allow the death penalty upon a nobleman⁵²⁵ to be made worse, as is accustomed to happen in very atrocious crimes (because noble blood should not be degraded by such increase of penalty which adds infamy). But for this purpose merely the nature of the crime is considered, and not the quality of the person, which would hinder the execution of a penalty carrying with it such infamy. Otherwise the torture of the vigil never could be inflicted upon noblemen, priests, and men in religious office upon whom an infamous penalty can not be inflicted. But nobility affords no privilege in the manner of torment,⁵²⁵ especially in very atrocious crimes. [Citation.]

GIOVANNI BATTISTA BOTTINI,
Advocate of the Fisc and of the Apostolic Chamber.

[ccvi]

[File-title of Pamphlet 14.]

*By the Most Illustrious and Most Reverend
Lord Governor in Criminal Cases:*

Roman Murder-case with qualifying circumstance.

*For the Fisc, against Count Guido Franceschini
and the others.*

Response of the Lord Advocate of the Fisc.

At Rome, in the type of the Reverend Apostolic Chamber, 1698.

alle. Conf. Rome

[ccvii]

RESPONSE

To the Account of the Fact, and Grounds in the Franceschini Case.

[Pamphlet 15.]

The splendid statue of Nebuchadnezzar fell because it was not firm on its feet. So fall to ground those imagined and forced suppositions concerning the origin of the present execrable murder, which the Anonymous Writer in his printed pages [Pamphlet 10] has tried to insinuate into the dull heads of the crowd.⁶¹ This murder was committed here in Rome upon three wretched and innocent persons, by Guido Franceschini, assisted by four men who were armed with prohibited arms,⁴¹³ who were brought together for that purpose by the influence of money, and who were kept insidiously for many days at his expense. [These pages claim that] the crime arose from justly conceived anger; [first], because eight months earlier³⁷³ Guido had discovered Francesca Pompilia, his wife, sinning against him in his own house at Arezzo, and [then] because she had fled in company with Canon Caponsacchi of the same city back to Rome to place herself again under the protection of Pietro and Violante Comparini, who had raised her as their daughter; and [thirdly] that the suspicion had also grown upon Guido that in her precipitate journey she might have broken with the Canon her marriage obligations, since certain love-letters²³² were found upon her, from which he unreasonably deduced her adultery, and he supposed that the said Caponsacchi was condemned as an adulterer to a three years' banishment at Civita Vecchia.²⁷¹ And these pages try, under the pretense of injured honor, to render Guido's crime less grave and to excite compassion, no less in foolish persons⁶¹ than in the hearts of our most religious judges, for the purpose of disposing them toward a milder penalty and one out of keeping, according to the laws, with the quality, form, and circumstances of this crime. And this in substance is all that is claimed by the author of the pamphlet entitled *Notizie di fatto, e di ragione nella Causa Franceschini*. But they are indeed very much at fault in their account of that tragic history, which had a different beginning and an occasion independent of the imagined ground of honor. In that pamphlet it was presupposed [ccviii] all too bitterly, that Guido's honor had been injured by his wife; whereas she always preserved her sense of shame and had well observed the laws of conjugal honor, as is plainly shown in this present article.

That this sad catastrophe, this slaughter of an entire family, did not proceed (as the Anonymous Author claims in his pages) from the pretended sense of injured honor, but from damnable greed,⁴⁶ one can very clearly see by considering the fact that for this very object the

unfortunate marriage with Francesca Pompilia was entered into by Franceschini.⁷⁶ For it was taken for granted that after the death of her supposed parents she would surely fall heir to a considerable property.⁹² All the more ought we believe that the crime was committed because of hatred arising from the three lawsuits then pending;²⁵⁹ that is, two in the civil courts and a third in the criminal courts. One of these was as to the legitimacy of the parentage of Francesca Pompilia, the wife, and the nullification of the dowry-agreement,²⁶⁰ and was brought by Pietro in the Tribunal of the Sacred Rota.²⁶² The second suit was for divorce,²⁶⁶ and was brought by the said Francesca Pompilia before the Vice-Governor.²⁶⁸ The third is a criminal suit, as to the pretended adultery,²⁶⁹ which is still pending in the Tribunal of his Excellency the Governor;²⁷⁰ this latter was brought under the very impulse of greed,⁴⁶ to gain the entire dowry. Since this fact was conclusively evident in the case introduced by the said Franceschini, he was deceived in this hope of gain by the failure of the proofs, which the defense caused to vanish utterly, as they could do by means of the wife. Hence he broke into an excess so tragic and so deplorable as to reveal clearly the tricks and frauds practiced for the purpose of bringing about that marriage. Here then are the plain proofs that this is the truth.

Guido Franceschini was staying at Rome in idleness, out of the service of a certain Cardinal,³⁹ without a soldo,⁴¹ by which service he had provided for himself up to that time. His usual loafing-place was in the shop of certain women-hairdressers,⁷⁸ where he often announced his intention of setting up his house with some good dowry. He also boasted of the grandeur of his country, his birth, and his property. By his promises he induced this woman to find him a chance for such a marriage, and she informed him of the opportunity in the said Francesca Pompilia. The latter was then esteemed to be the true and legitimate daughter of Pietro and Violante Comparini. He set about this enterprise with the aid of his brother Abate Paolo, using the astute prudence⁷⁹ with which the malign serpent advanced his designs in [ccix] Paradise to subvert Adam into disobeying God's precept and into eating the forbidden fruit; for [Satan] considered the matter in this way: "If I wish to assault the man directly, who is so strong and so resolute, he will turn and give me a sure repulse. It is therefore better that I first tempt the woman, who is of a fickle nature and soft-hearted." And he made his first attack upon Eve; because when he had gained his point that he might have her, by her means it would be easier for him to win over Adam. "For he first attacked the mind of the weaker sex," are the ingenious words of St. Hilario.

And so for this purpose did the said Guido devise the marriage with the knowledge of his brother, Abate Paolo, and likewise to this point he succeeded in it. For he avoided talking with Signor Pietro⁷⁹ about

the marriage, by whom it would probably have been refused, and wished first to tempt Violante, his wife. Because by gaining her he would the more easily overpersuade her husband to give his consent. Nor was it difficult ⁸⁰ for him to astound the woman, because he knew how to impress her very well with the thought of the grandeur of his country, of the first-rate nobility of his birth,⁸⁸ and of the great income from his patrimony, amounting to 1,700 scudi.⁸² And he gave her an itemized account of it written with his own hand. She was enchanted thereby and, without getting any further information about the matter, she was able to persuade her husband and to extract from him his consent to it.⁸¹ This proves what we read written in Proverbs: "A wife takes captive the soul of her husband." He speaks this of Mordecai who availed himself of Esther, when he wished to placate the anger of Ahasuerus against his people; of Joab, who used the services of the woman of Tekoah when he wished to soften the anger of David against his son; and of the Philistines of Timnath, when they wished to gain from Samson the secret of the riddle proposed to them at the marriage feast.

The credulous but deceived woman so cajoled her husband ⁸¹ that she at last induced him to sign the marriage agreement providing for a dowry of 26 bonds ⁹¹ and, at the death of the said Comparini, for all their possession,⁹² amounting, as the Anonymous Writer acknowledges, to the sum of 12,000 scudi.⁹⁷ And, for the purpose of making the said Franceschini guardians of the said property even during the life of the Comparini, they had to give up even the income of it. This property consisted of numbers of profitable and well-situated houses, and of bonds.⁹³ The Franceschini also assumed the obligation [ccx] to take the said Comparini to the city of Arezzo, and there to feed, clothe,⁹⁸ and provide them such service as they would need. This promise was made not without the hope that on account of the insults and sufferings which they would have to bear their death would be hastened. And thus Guido would become the absolute master of their property.

After having signed the said agreement Pietro absolutely refused to go on with the effectuation of the marriage ⁸⁴ of the said Francesca Pompilia, with the abovesaid Guido, of whom he had had few good reports;⁸³ and these were far different from the pretended riches and vaunted nobility. Hence one may well say of him what Persius concludes in his fourth Satire: "See what has no real existence; let the rabble carry off their presents elsewhere. Dwell with yourself, and you will know how meager your furnishing may be."

At any rate, the said Guido joined the said Violante, whom he had imbued with his flatteries and endearments, spurning any further consent of Pietro by keeping him in ignorance of it. And without the knowledge of the latter, Guido contracted the marriage with the said

Francesca Pompilia in the face of the Church.⁸⁵ And he evermore discloses by this act, which shows so little reverence to the promiser of the dowry, his own greed,⁴⁶ not merely for the amount which had been assigned to him in the marriage agreement, but also for the rest of Pietro's property. For he felt sure that after Pietro's death the property, by the entail⁶⁸ of the ancestors, would necessarily fall to the said Francesca Pompilia, who was already his wife.

When, after a few days, Pietro found out⁸⁷ that the marriage had taken place, though he reproved the deed vigorously, yet because what is done can not be undone, and by means of the cajoleries of Violante his wife⁸⁸ and the interposition of another Cardinal, whom the Abate, Guido's brother,⁵⁰ served, the poor old fellow was constrained to drink the cup of his bitterness. And he came, as it were by force, after many months to the stipulations of the dowry agreement. He quickly began to feel the effects of Franceschini's trick, since Guido had scarcely a single soldo of his own to pay the first expenses of that marriage agreement. Hence, to supply these, he was obliged, against the wish of Pietro to free from entail five of the bonds, or more, by the authority of the Auditor of the Most Illustrious Governor, and to sell them for [ccxi] meeting these expenses. Hence one may see clearly that the primary object of Franceschini in this proceeding was to trick Pietro, and Violante his wife, and their poor child, to enrich himself with the property of others.⁴⁶

He can no longer deny the fraudulent pretense of vaunted riches of the Franceschini in the note written in his own hand⁸² and given to the Comparini. And indeed the Anonymous Writer confesses it openly. For, in order to free Abate Paolo from complicity in that trick, the latter pretended that he took Guido his brother to task roundly for the alteration of the said note. The said Comparini very quickly found this out. For as soon as they had gone to Arezzo they learned that the property of the Franceschini family was very slight. And such were the miseries and abuses⁹⁵ that the Comparini had to suffer in victuals and in harsh treatment that they were obliged to return to Rome¹⁰⁰ after a few months;⁹⁸ for they were locked out of the home and had to go to the tavern to lodge; and these abuses were for the purpose of shortening their lives, either by their sufferings, or the fury caused thereby. And this fact is very evidently proved by the rent-rolls taken from the public records of the city of Arezzo. From these it is shown that the said Guido did not possess a single dollar's worth of the settled property mentioned in the said note. It is also untrue that he and his family enjoyed the highest rank of nobility in the city, because, from other extracts drawn from the public records of the city, it is evident that his family is of only secondary rank.⁹⁸

The abovesaid crafty and fraudulent methods of dealing, which came to light long before the murder had followed, and which became known in this Court and in Arezzo, can well show that greed ⁴⁶ was the origin of this premeditated slaughter (which was put in execution in such a horrible manner, as is notorious) and not the pretended ground of injured honor. For, according to common opinion, Abate Paolo, no less than Guido his brother, had worked the tricks ⁵⁰ exposed as above. And by men they were suspected of subterfuge and craft, so that this made them more sensible of injury than anything else. Hence they could no longer boast the grandeur of their nobility and the affluence of their riches, which they had spread abroad on the lips of the crowd. And every one avoided having anything to do with them, ²⁵⁷ as persons of bad faith and as [ccxii] usurping a glory to which they had no real right.

The greediness of this self-interest became greatly inflamed; so that in these Franceschini brethren one may see the common axiom verified: "Craft is deluded by craft." ¹⁰⁸ That is to say, Violante was urged on by remorse of conscience ¹⁰¹ and by the abuses and injuries received in their house, and was constrained by her confessor ¹⁰⁴ at the time of the Jubilee ¹⁰² to reveal to Pietro, her husband, that the said Francesca Pompilia was not their daughter, but was of a false birth. ¹⁰³ And this seems very probable in view of the age of 48, ⁶⁴ which Violante had reached, when she pretended to be pregnant with her; because in the fourteen years, during which she had lived in lawful matrimony with Pietro, she had never had children. Also, by witnesses then living, ²⁶¹ she could afford conclusive proof of the pretense of the birth. And when notice of that had been given to Abate Paolo, that he might come to some compromise over the annulling of the dowry contract for the entire patrimonial property, he spurned the kind offers made to him through the mediation of friendly persons and refused every means of peace. Then a warning (as to the falsity of the said birth and the illegality of the dowry contract) was served on him by Pietro before Monsignor Tommati. ²⁶² And conclusive proof of the birth was given by six witnesses, ²⁶¹ who were examined before the judge with questions offered in behalf of the said Franceschini. Yet the same judge saw best to forward the case during the mere immediate possession, by continuing to the said Francesca Pompilia the quasi-possession of her parenthood. ²⁶³ Nevertheless, an appeal was taken from his sentence, ²⁶⁴ and it was committed to the Sacred Rota, before Monsignor Molines, ²⁶² where it still hangs undecided ²⁶⁵ as to the principal point of the pretended parentage and the nullity of the dowry contract. For righteous judgment in such a tribunal the judge doubtless awaited for conclusive proofs of the said pretense of birth. The nullity of the dowry contract would none the less be decided, because it had made declaration that the

said Francesca Pompilia was their daughter. And with this falsehood the advantage which the Franceschini had obtained for their own selfish gain by such tricks would cease.

All this is proved by the reflection that the trick of Franceschini was made public, not merely in Rome, but in Arezzo, [ccxiii] and that he also was deluded by a similar artifice because of the proofs already made, while judgment was pending, that the said Francesca Pompilia was not the real and legitimate daughter of the said Comparini. On the ground of these far-fetched suspicions, Guido made pretense of a reason for maltreating her with insults and blows, and more than once he provided himself with a sword¹³⁴ and fire-arms to take her life. He did this to take vengeance upon her for his own trick, by which he had been deluded.¹⁰⁸ Therefore it was quite right for the poor wife, who was of the tender age of sixteen years and a stranger in the place, to avoid the rage of her husband at different times by fleeing for protection to Monsignor the Bishop,¹³⁹ and to the Governor,¹³⁵ or Commissioner of the City, that they might put some check upon the cruelties she was suffering. And although these persons by their interest in the matter succeeded for the time in putting a stop to the threats, yet the poor intimidated wife always passed her days shut in a room.¹²⁷ And her fear was greatly increased because she saw that the said Guido had made a mixture of poison¹³³ with which he threatened he would take her life without the uproar attendant on the use of arms; and thus he would be the surer of his crime going unpunished. Now if, even at a time when no shadow of suspicion of dishonor had fallen, the husband was contriving the death of his wife, the Anonymous Writer might well abstain from soiling his pages for the purpose of proving that the slaughter of those murdered had had its origin in the impulse to repair offended honor. For his pages would have had much better foundation if he had consulted the truth, namely that these crimes had arisen from deluded self-interest.^{48 108}

The poor wife, in her agitation over these difficulties that we have told, had nothing else to do but think of finding refuge from the death she feared. And when her mind was somewhat sharpened by its vexations, she intrusted herself to the Canon Conti,¹⁴⁵ who is closely related to the Franceschini, and declared to him her miseries, her perils, and her just fears (although they were not unknown to him), in order that he might try to give her consolation by placing her life in safety. He was touched with living compassion and was moved to free her therefrom by pity for the grievous state in which she was. And he well knew that there was no other escape than flight from the home of her husband, according to the saying of the poet [Virg. A., III, 44]: "Alas, flee the cruel earth, flee the greedy shore." But not being able to give her aid in this affair, [ccxiv] he suggested to her that for putting

the matter into execution, there was no better person to the purpose than Canon Giuseppe Caponsacchi,^{28 35} his friend and intimate, whose spirit had stood every test.²⁹ And when Conti had spoken of it to him, although Caponsacchi saw difficulty in aiding the desire of the young woman, because he did not wish to incur the anger of the Franceschini, yet at last the impulse of charity and pity¹⁴⁵ prevailed upon him to free this innocent woman from death. And when his readiness for the attempt was reported to her by Conti, she did not fail to inflame him with more messages and letters,²⁴⁷ even containing alluring endearments, for the effecting of her escape. Yet she also kept during all this time her constant desire of not violating her marriage-vow, since in some of these letters²³² she praises the Canon for his chastity, and in others reproves him for having sent her some rather improper octaves. She also warned him against degenerating from the good behavior, on which she had congratulated herself and had planned with him the flight.

While her husband and the whole household were asleep, both of them, with the assistance of the Canon Conti,³⁵ set out upon a headlong journey¹⁹⁴ by post, without losing a moment's time, except for changing horses; and they arrived by night at Castelnovo. And although the host had prepared a bed for rest, nevertheless they did not avail themselves of it. For Caponsacchi was always solicitously watching²¹⁴ to see that the driver prepared other horses,²¹⁹ to continue the journey to its end. Nor did the host of that tavern, when cross-examined in the prosecution for flight, ever dream of bearing witness that the wife and Caponsacchi had slept together²¹⁵ in the bed that was prepared, even though Franceschini, to his own dishonor, had published the contrary, that he might, by the pretense of injured honor, throw a false light upon the true grounds of the murders committed by him.

In the meantime her husband arrived. When his wife saw him, did she, timid as she was,²²⁴ shrink back? Did she acknowledge herself guilty of any sin, or of any wrong done to him in guarding her purity and modesty? No! But all on fire, though she was at the tender age of sixteen years, as I have already said, the constancy of her own honor rebuked²²⁸ him for the tricks and abuses¹²² which he had employed, and for the threats and blows he had very often given her, and for the poisonous drugs¹³³ he had prepared to take her life. And [she declared] that she had been obliged to do as she had done, to find an escape by flight from graver peril, [ccxv] and to go back to the pity of the Comparini, who had raised her as their daughter; and that she had always been careful to keep her wifely honor intact. The same rebuke was made by Caponsacchi,²²⁰ who during the flight had religiously observed the limits of due modesty.

What did Franceschini answer? What did he try to do, although he was armed with a sword²⁰⁴ against his defenseless wife and against

Caponsacchi, who had with him only a little dagger? ²²¹ Nothing, indeed! according to what witnesses who were present deposed; for he stood convicted by the just remonstrances of his wife. ²²³ But what did he do? He gave up all vengeance, which by right of natural law, or much more by civil law, he might have taken for that; ⁴⁰³ and, as the Anonymous Writer goes on to boast in justifying him for this execrable crime, he implored the arm of the Law ²²² and had his wife and Caponsacchi arrested by the authorities ²²⁶ of the place. And at his own instance they were conducted as prisoners to the prisons ²⁵⁵ of the Most Illustrious Governor of Rome, before whom Guido charged them with flight. Then, not content with this, he brought forward that other charge of supposed adultery committed with the said Caponsacchi. ²⁶⁹ He also outdid himself greatly by making noisy petition to the Supreme Pontiff ²⁸⁰ for their punishment, and the latter sent back ²⁸¹ his entreaties to Monsignor the Governor. He was brazen enough to demand, with a new complaint, that his wife should be declared an adulteress and that to him, according to law, should pass all the gain of the dowry. ⁴⁶ This in substance clearly proves that he did not insist on vengeance for the reparation of his honor, which he himself had passed by, but he did all this for the sole object of gain, that is to win the dowry. ⁴⁶

What efforts, what exclamations, what diligence did Franceschini and Abate Paolo, his brother, not use to have the wife declared an adulteress and to gain the desired lucre? ⁴⁶ Monsignor, the Most Illustrious Governor, ²⁷⁰ knows it, who endured with all forbearance their passionate pressure upon him. Signor Venturini, ²⁷⁰ judge in the case, knows it. And all the other judges and notaries of the Court, who were nauseated by their importunity, know this very well. Then since judgment could not in any event fall according to the designs of the Franceschini, as there was no proof in the trial of any offense, either in the wife or in the said Caponsacchi, the most Religious Judges, who in prudence were judging rigorously [ccxvi] (for the purpose of giving some satisfaction ²⁷⁹ to the Franceschini brothers in their strong insistence, rather than because of the obligations of justice), banished the said Caponsacchi to Civita Vecchia for three years. ²⁷¹ Caponsacchi straightway obeyed this sentence and has never left the place assigned him. ²⁹³ The case was left undecided as regards the wife who was placed in the Nunnery of the Scalette as a prison. ²⁷⁶ Then when there was some question as to her pregnancy, ²⁸³ with equal prudence, she was removed from the nunnery by the order of the Most Illustrious Governor; for it was not decorous that she should give birth to a child there. And with the consent of the said Abate Paolo ²⁸⁸ she was placed in the home of the said Comparini under security of 300 scudi to keep it as a secure prison. ²⁸⁴

On this point the Anonymous Writer disputes too bitterly what was written learnedly by the Fisc, and claims that the consent of the said Abate Paolo had not been given. But the great and incorruptible integrity of the Fisc is known to everyone; because of which he would be unwilling to give his word in writing for what was not evident on the surest proof. Yet the fact of Abate Paolo's consent is plainly proved, since he in person so agreed with Monsignor, the Most Illustrious Governor,²⁷⁰ and with Signor Venturini,²⁷⁰ the judge, jointly. And he exacted from Pietro Comparini the obligation to supply her with food²⁸⁷ without any hope of recompense. And this was so carried out, although the quality of the Comparini did not deserve so indecent a rebuke, on account of having been too indulgent with them.

With like bitterness it is denied that the said Abate Paolo had power of attorney from Guido, his brother, enough to give such consent; because, in making such a provision, Monsignor the Governor had no need of the consent of the parties. And, even if he had wished to show Abate Paolo such courtesy and urbanity, the Author should not reply thereto with such incivility, in criticizing the judge for having done wrong because of the lack of that power of attorney. For by such procedure [Abate Paolo] proves that he wished to trick also Monsignor the Governor into consenting to a thing beyond his power. And he rests convicted of this, because the said Abate Paolo was the manipulator of all they did, nor was a straw moved without his assistance.⁵⁰ And he was well provided with abundant power of attorney by his brother, [ccxvii] wherefrom he had the fullest authority to do as if he were the very person of his brother, with a proviso of after confirmation, the efficacy of which everyone knows. And this is confessed even by the Anonymous Author, since he asserts that Guido at his departure left the entire conduct²⁵⁶ of his case to the Abate, his brother. But one may well see with what object he denies the said consent, that is, in order that he may more bitterly make pretense of the complicity of the Comparini in the pretended dishonesty of Francesca, who had been guarded by them as a daughter. This would seem very improbable if he should once admit the consent of the Abate.

No less rancorous is the assertion made by the Anonymous Writer that Lamparelli laid out the money to provide Pompilia with food while she was in safe-keeping.²⁸² Nor was Lamparelli reimbursed by the deposit in the Office, which had come from the money found on her and on Caponsacchi, when they were arrested at Castelnuovo, which was supposed to have been stolen from the husband. But the 48 scudi, which the wife confessed to have taken away from him, were fully restored to the said Abate Paolo, as is proved by his receipt, made during the trial. The rest of the money was conclusively proved to belong to Caponsacchi. And as soon as Abate Paolo received the

money, for which he continually clamored, he left Rome to take part in the planning of that notorious murder,³⁰⁴ which followed a little while later.

But there had previously been given notice, at the instance of Francesca Pompilia before Monsignor, the Vice-Governor,²⁶⁸ of a suit for divorce²⁶⁶ and for the recovery of the dowry,²⁶⁷ which had been spent. This was very bitter to the Franceschini, because in that lawsuit conclusive proof would be made of their subterfuges, their cruelties, their threats of poisonous drugs¹³³ that had been prepared; of which the Canon Conti,³⁵ who was the mediator in that flight, had not been ignorant. And it is public talk and report throughout Arezzo that he died about a month ago³⁶ under similar suspicious circumstances. Hereby ceased all hope, which the Franceschini had had from the beginning, of gaining the entire property of the Comparini.⁴⁶ And from this every sane mind may see and know what is the true root of such rash and pitiable murders; whether it is injured honor, or scandalous and detestable greed and cupidity.⁴⁶ From this arose the hatred in the lawsuits brought and still undecided, which drew even greater dishonor upon the said Franceschini, and when decided would be for their ruin.

[ccxviii] In vain therefore this Anonymous Writer and his other defenders wear themselves out in exaggerating the plea of injured honor. For then that which had no true existence would have been taken from Guido by his wife. This was fully proved in the arguments made for the Fisc, in answering those letters,²³² from which Guido drew his strongest proof. On the contrary, Franceschini has by his own deed renounced all right to repair his honor,²²³ since he did not avenge it at the time of overtaking her in the said inn of Castelnuovo. Nor does his excuse really help him—that he was unarmed, because he had with him indeed a sword,²⁰⁴ and possibly other concealed arms. For it is not probable that he would have been willing to go on following his wife accompanied by Caponsacchi, without being provided with arms. And this all the more because the fugitives also were unarmed and were provided merely with a little dagger.²²¹ But Guido preferred to chose the judicial road²²² and had them arrested by the police,²²⁰ and he demanded that the charge against them be pushed through to their punishment, even imploring the rescript of the Supreme Pontiff.²⁸⁰ He also laid his entreaties again before the judges in the case (this very well discloses his purpose, which was the unconquerable motive of all his acts) and made special insistence before them for the payment of the price of the honor, which he pretended had been taken from him. And would he not even have had his wife declared an adulteress for the sake of gaining the dowry?⁴⁶ If then he has, as one may say, demanded the price of his honor in the Courts, how can he be permitted to commit such awful murders for honor's sake?

For whenever a husband is permitted by reason of natural law, or even by the civil law, to kill his wife for honor's sake, this power and faculty ceases whenever the husband has renounced it by imploring, as above, the arm of the law. And these complaints that he made, and his recourse to the Pope,²⁸⁰ show the price he put upon his honor. And with these judicial proceedings he lost, without doubt, his right of private vengeance for his injured honor, which he might have carried out. And by this one tacit renunciation this right is extinct. [Citation.] For the Writer can not claim that the judicial action brought by Franceschini would not effect the renunciation of private vengeance [ccxix] for his honor, but that he could still employ the one or the other, and avail himself of whichever might seem better to him. For this is contrary to the text [Citation] which is stated as follows by the celebrated Canonist, Giovanni Andrea: "A choice can not gain both alternatives in seeking confirmation therefrom; even if the one is claimed to include that by which the man can attain the end of his intention. Therefore a man must chose one, and when it is chosen he can not turn to the other." And still clearer are the following words of the same authority: "The right to return to a second alternative shall not at all be allowed, when one seems to have renounced to choose the first and to profess that his rights can not arise therefrom."

But although this exception from every miscarried law might be judged permissible, every foundation of it would be destroyed by the utter lack of proof of an offense received in his honor; for there was no proof of it in the prosecution for flight. The Anonymous Writer strives to deduce that from the pretended love letters²⁸² written to Caponsacchi, which were denied by Francesca and were not proved to be her handwriting, either by her own acknowledgment or by her signature. One can not claim that she was convicted of it, nor that any legitimate proof of it resulted, as all judicial practice shows.

And even if without reason we were obliged to acknowledge that they were written by her, would it not be too bitter and too unreasonable an inference that from them arose the husband's motive for killing her because she had written them? No one of sound mind will be persuaded to pity the husband who has gone on to kill his wife for the sole reason that she had written love letters. For conjugal honor is offended neither by note, nor by pen, but only by acts of impure dishonor; and of this, in our case, every shadow of proof is lacking.

This is all the more true because the mere suspicion of dishonor ceases with a thought of the true motive, for which the letters were written;²⁴⁷ namely, by pretended demonstration of affection to allure this Caponsacchi to rescue her from imminent peril of death. Nor from this could she find any other escape than by flight; for she was always terrorized by the anger and hatred conceived by her husband for

feigned reasons. [ccxx] And therefore, as the love letters arose from that occasion they ought to be referred to it, and not to a dishonorable wish to smirch her conjugal faith to her husband. To the same cause, likewise, should certain conversations be referred, which she had had from the window with the said Caponsacchi in order to arrange the manner of saving her life, and not to give offense, nor to hazard her own modesty, nor the honor of her husband. Even the most chaste of women have used like artifices. We find in the Sacred Scriptures that Judith ⁴²⁶ entrapped Holofernes in the same way, for the purpose of winning the liberty of her native land. And so it may be no less permissible for this poor woman, who was solely intent upon the security of her life, to allure Caponsacchi ²⁴⁷ by amatory letters to be a safe companion for her in her flight, and this without any stigma of immodesty.

Much less can an offense of his honor be inferred from the flight; because, as I noted above, this flight resulted from the cause declared. And one may see clearly that it was not for doing any injury to her husband. For the fugitives did not turn aside into unknown places, ²⁰³ but they journeyed precipitately along the consular road by post, without spending the night anywhere. ¹⁹⁴ And their journey was toward Rome, where the poor wife hoped that the Comparini, who had raised her as their daughter, would continue toward her those acts of love with which they had brought her up, even till the said marriage was contracted with Franceschini.

And all that is being reported that a driver testifies he had seen them kissing ²⁰⁶ along the road has no legal foundation. For it rests merely on the word of a single witness of the lowest class, and he swears to matters that are quite improbable, because he had to drive the carriage with such rapidity as that with which the fugitives were following their journey. Hence it was almost impossible for him to look backward, or to see what they were doing inside of that covered carriage. And this is all the more so because his deposition is vague, nor does it specify whether the kisses were given at night or by day. But his deposition is rendered much more doubtful and improbable because, in such a swift journey as the carriage was making, it might chance during the jolting ²⁰⁹ of it that the accident of their faces meeting casually would arise, and to him this might seem the act of kissing. This happens very commonly, even when one is making no such journey, according to the quality of the road and the rough ways which one finds. This makes his [ccxxi] testimony insufficient and doubtful enough or, even further, it is audacious and incredible.

Then as to the other point which the Anonymous Writer asserts too bitterly, namely, that when they arrived at Castelnovo the innkeeper was ordered to make up only one bed for the repose of the fugitives,

and that they slept together.²¹⁵ The host, however, did not have the hardihood to swear, in his cross-examination, that they had slept together in it. This circumstance is excluded by the deposition of the wife as well as by that of Caponsacchi. Because their affidavits constantly affirm that neither of them went to bed for rest, but that merely the wife, who was worn out by the discomfort and suffering of so precipitate a journey, rested for a few hours seated in a chair; and that the bed was left arranged as the host had adjusted it; and it would have been found mussed, if they had slept in it. It is also proved that when Franceschini arrived at the said place he found Caponsacchi urging that the horses be harnessed for continuing the journey,²¹⁹ and no proof is given to the contrary. Nor can one justly pity Franceschini for his injured honor, which had been kept intact by the fugitives.

Likewise the title,²⁷⁴ to which the same Writer appeals—that the decree of condemnation for Caponsacchi's banishment had been inflicted because of criminal knowledge,²⁷¹ to the injury of Guido's honor—has no real foundation; because this title was corrected as untrue, and not in accord with the proofs. Of this fact we may have as legitimate witnesses the very Governor himself, and all the judges and notaries of the tribunal who have any part in the criminal court. And if one will only give it due thought, the title of that case was placed there, just as a wine bush ²⁷⁵ hangs outside the door of an inn, which very well shows that they sell wine there, but does not prove whether what they sell is good, and salable, and agreeable. Oh! by no means. For one may find the wine there to be sharp, and muddy, and of other inferior qualities. If therefore we read the documents and the proofs registered during the prosecution, by which the crime is proved, and not by the erroneous title, which can not offer a shadow of proof for the pretended criminal commerce, there is even less suspicion of immodesty. And one can well understand that all proof was lacking during the prosecution, [ccxxii] from the mildness ²⁷² of the penalty inflicted, which does not at all correspond with the gravity of the crime charged. One can also see the impropriety of condemning Caponsacchi as an adulterer ²⁷¹ while the cause against the wife was still pending;²⁷⁶ because she could not be condemned while undefended.

But to remove every suspicion of this pretended adultery, I beg any dispassionate reader to reflect that the adultery could not have been committed in Arezzo, because to the guardianship of her husband was added that of the brothers, of their common mother, of the servant, of the relatives, and of the neighbors; yea, the voluntary imprisonment ¹²⁷ of the unfortunate child, who was always shut in a small room to guard her honor. Much less could adultery have been committed during the journey, as has been proved to be utterly unlikely, improbable, unproved, and far from the truth. Nor could it have been committed at

Rome; for it is well known that Pompilia was taken from Castelnuovo to prison,²⁵⁵ and from there was removed to the Nunnery of the Scalette,²⁷⁶ and then because of her pregnancy²⁸³ was consigned to the said Comparini, under the form of keeping their house as a prison with security of 300 scudi.²⁸⁴ Caponsacchi also was staying then at his place of banishment in Civita Vecchia. In this fact all suspicion ceases, since the consent of Abate Franceschini,²⁸⁸ who is so zealous for his brother's honor, as well as his own, concurred therein.

Nor can one restrain himself without strong exertion when he hears such exaggeration from the Anonymous Writer as that Caponsacchi left his prison to go in banishment to Civita Vecchia at a time when the wife was staying in the house of the said couple, as a prison, and that he lodged²⁹³ in their house. But he can not speak a more barefaced lie than that, because Caponsacchi has never been their guest, and as soon as he left the prison he went to the place of his exile; and he has faithfully observed his banishment without ever returning to Rome. Nor did the wife leave the nunnery before it was proved to Monsignor the Governor that Caponsacchi was staying in Civita Vecchia, as was established by the authentic testimony of the Chancellor of that district.

The said Writer, however, gives me even more room to blame his excessive boldness in stigmatizing the honor of Franceschini as sullied by his wife, by saying that as soon as Guido had ascended the stairs in company with his fellows, armed to commit this execrable murder, he looked about upon those walls,³²² which were all full of his insults, as if the said silent stones [ccxxiii] had known how to make contrivances of foolish thoughts to foment his inhumanity for so horrible a murder. Because for this he can give no other proof than that he was writing fancifully without any foundation. For Guido was indeed willingly dishonored; because to his other dishonors he added these disgraces also, even by his own wrongdoing. For it is made very clear above that the cause for which he committed the crime was not to repair his honor, which had been injured by his wife. But it was his unmasked tricks, the hoped-for lucre,⁴⁶ which had vanished, and the lawsuits still pending.

And why can he not bring some other no less convincing proof, if honor urged Franceschini thereto? And was not that honor sufficiently avenged by the death of his wife? Why imbrue himself straightway with the blood of Violante and Pietro,⁴⁰¹ who were not accomplices in the pretended dishonor? And why should he lay such plots through many days to procure the death of that kindly benefactor, because the latter had been moved by pity and had ministered to their aid in the said lawsuits? Upon that one there has never fallen a suspicion prejudicial to Guido's honor. For while the wife was in Arezzo he was staying at Rome. And when she was first married she was not fully thirteen

years old, and after her flight, when she had returned to Rome, we know that she continued under guard in prison, or in the nunnery, and then in the home of her parents, and at this time she was very near her confinement. Hence one can conclude truly that the motive of this murder was other than that of honor, and that it was his greed,⁴⁶ as was said, and the lawsuits,⁴²¹ as Franceschini himself confesses in his cross-examination.

Nor ought the declaration made by the said wife in the face of death be despised, since in the presence of many priests and persons who are quite trustworthy, even while she was constantly suffering from such severe wounds, she maintained and professed with greatest frankness that she had always lived chaste and faithful to her husband.³⁵⁵ And with a heart in fullest resignation to the Divine Mercy, she prayed pardon for every mistake she had committed to the disgrace of her husband. Nor in such a matter is it to be presumed that the one dying lies, at the risk of the eternal safety of her soul.³⁶² A person should also reflect that in this deed there occurs a special favor³⁴⁸ from the hand of the very Omnipotent, who caused the wife to survive for a few days, in order that she might [ccxxiv] make clear her own innocence and throw light upon the murderers; for without this the crimes would have gone unpunished. For during the same crime Franceschini had repeatedly commanded his companions to see if she were quite dead. And when they had taken her by the tresses,³²⁷ and had lifted her from the ground where she lay, they believed she was dead; because the poor wife, by natural instinct,³²⁹ knew how to feign it by her relaxation, as the delinquents confessed. And this mark of divine favor³⁴⁸ all the more verifies the declaration of the wife, which has been proved by the confession of those guilty of the crime.

I have left it for the last to discuss and refute what the said Writer pretends concerning Abate Paolo.³⁰⁵ But if he had to speak the truth, he might reasonably affirm that the Abate⁵⁰ had been the whole foundation of this scandal. For he had urged Guido on to the murders, and he had woven the whole plot, inasmuch as it was he who, from the beginning wished to attain, by dint of industry and trickiness, the marriage of the said Francesca Pompilia. It was he who had sustained the suits, both civil and criminal, and he who, under the name of a grandee and by boasting of their word of honor, had tried to extort a judgment by means of fine insinuations, by subterfuge, and by trickery; which was not right. It was he, who was very sensible of having been proved to be the man of guile, who had been deluded by his own trick.¹⁰⁸ Therefore this Writer had good reason to say that the faces of others served the Abate as mirrors by which to read his own evil courses, and not the lost honor of his brother.

I forbear to respond to what the Anonymous Writer has tried to have believed to the praise of Abate Paolo Franceschini, to excite greatly our pity; since the intention⁵⁹ of the author of the present response is no other than to make clear the falsity of the suppositions against the honor of the poor wife and against the Comparini, and to serve the cause of justice. And he leaves the judgment of it to those who have full knowledge of it. From the same consideration I pass over responding to the many other improprieties, which have been advanced uselessly and without any point by the said Writer.

And I close my response with the example of Samson, alleged by him. When he saw himself exposed to the public scoffs of the people, he gave a shove to the pillars of the palace, causing it to fall that he might die with the rest under its ruins, [ccxxv] and might cease to be longer the scorn of that people. So lest the said Franceschini may be ridiculed for his tricks, it is fitting that he and his companions pay the penalty merited by their crime. For these are pernicious to the State and to that peace and security which litigants in the Courts of Rome ought to enjoy, if we would maintain what the vigilance of the Supreme Pontiff Alexander VII, and his successors, has provided. For they have published a Constitution as to that, and with it Banns, successively promulgated. The sacred order of such laws should be observed all the more willingly, inasmuch as Guido had chosen the judicial way to vengeance, and the appeals made to the Supreme Pontiff,²⁸⁰ who is most eager to do what is just,⁶² were sent back to his judges.²⁸¹ Nor could Guido grieve for this without some pretended injury, as is evident; hence the Anonymous Writer wished to ascribe it to the aggravation by which the anger of Franceschini had been exasperated. This clearly shows with what intent he had broken into such detestable excesses.

[ccxxvi is blank in original.]

[ccxxvii] **Romana Homicidiorum.**

[Pamphlet 16.]

Most Illustrious and Most Reverend Lord:

I omit further discussion with my Lord Advocate of the Fisc about the communication of his allegations, because the time is brief, and I have professed great reverence for him since my youth. Let me also pass over the claim that when one is arguing about death inflicted by a husband upon his wife, not in the act of taking her in adultery, but after an interval, mere suspicion, however strong, is not sufficient to redeem him from the ordinary penalty of the Cornelian law, but that the clearest proof of the adultery is required, as is claimed by our opponents. Yet we have proved the contrary in our former argument § *quamquam ad hoc*. [Cf. p. xxvi.] And Dondeus, Sanfelicius, and Muta, who were not cited there, hold that it is quite enough if the couple be found alone in some retreat; and No. 3 says especially if the wife be beautiful. [Citation.] See the word of Ovid: "Great is the strife of modesty with beauty, And man keeps eagerly craving it." [Heroides, Paris to Helen.] So in the present case, according to the same author: "By this young and passionate man is she supposed to have been returned still a virgin?" [Heroides, 5, 109.]

At present, we are dealing with a case not merely of clearest proof, but also of notorious fact; because we have a decree of this very Tribunal, by which such adultery was declared.²⁷¹ Although the words of this decree have been given in the present information, § *Absque eo quod* [cf. p. cxxvi], yet I wish to repeat them here, because they are so clear: "Giuseppe Maria Caponsacchi, of Arezzo, for complicity in the flight and running away of Francesca Comparini, and for criminal knowledge of the same, is banished for three years to Civita Vecchia."

But I can not pass over what is still claimed—that this decree was revoked—because, as I have said in my information, the truth is quite the contrary; for we have only the fact that, in the mandate for imprisoning the sinning Canon, the repetition of the whole decree, as given above, was omitted, and it was said: "For the cause, concerning which in the suit." These words are so far from showing a revocation that they rather offer confirmation of the said decree, as we have affirmed in our information, § *Nec verum est*. [Cf. p. cxxvi.] The same should be said of the like words furnished by the notary in the bond which Francesca Pompilia executed to keep the home of her father as a prison.²⁸⁴ This was when she was brought there from the nunnery, where she had been staying securely, on the grounds of her supposed

infirmity,²⁸³ but I may say more truly that it was because of her pregnancy, which she wished to hide by some evil deed.

[Our claim is all the more true] because this pretended revocation of the decree could not be made when the other side had not been heard, as I have said in my information § *Eoque magis*. [Cf. p. cxxvii.]

[ccxxviii] Likewise I can not pass over what is said as to the Canon having been condemned only to the penalty of banishment²⁷¹ because of defect of proof²⁷³ of adultery. For if such proof had not existed, how could my Lords Judges express in the decree that they condemned him for criminal knowledge of the same Francesca Pompilia? It is the truth that the judges held that the said adultery was most conclusively proved, and that the said Canon was convicted of the same, since in the prosecution nothing is wanting but the taking of them in the foul act; and this is not necessary to prove adultery. [Citations.]

The penalty to which the said Canon was condemned did not indeed correspond with the said crime.²⁷² As to this many replies may be made, but, because this has no connection with Count Guido let it also pass by. For however that may be, who can deny that Count Guido, on reading the said decree, which needed no comment, ought justly to be angered for the conjugal faith violated toward himself? And who can deny that he ought to be somewhat excused, if afterward he took vengeance for such a violation? [Citations.]

And this is true, although he took such vengeance after an interval, as was plainly demonstrated in my said past information, § *nec verum est*. [Cf. p. xxvi.] For there are few authorities who hold the contrary, and therefore it would be almost heretical to doubt the truth of such an opinion. [Citation.] Especially since this has been accepted in almost all the tribunals in the world, especially in that of the Sacred Council, which establishes the precedent for all the other tribunals of the City and of the entire Ecclesiastical State. Hence Concioli affirms that it is almost like sacrilege to depart from this opinion. [Citation.]

And is it not a fine pretense to wish to exclude the plainest proofs of adultery by the word of the very wife convicted of it, and then retained in the nunnery by reason of it, as my honorable Lord Procurator General of the Fisc has ingenuously acknowledged? For a person is not obliged to disclose his own baseness in the face of death, as we have proved in the said present information, § *Et quatenus* [cf. p. cxxx], and the § following. And since she had lived badly, not to say in utter baseness, to the injury of the honor and reputation of her husband, we inflict no injury on her by wishing to presume that even in death she did not come to her right mind, according to the saying: "He who lives badly dies badly." And no one, even in death, is presumed to be a Saint John the Baptist, as in my information § *Nec valet dici*. [Cf. p. cxxxi.]

As therefore it remains firmly established that Count Guido had just cause for killing, or causing to be killed, Francesca Pompilia, [ccxxix] his wife, the same must be said as to the murder of Pietro and Violante,⁴⁰¹ the father-in-law and mother-in-law. For in the prosecution of the said Francesca Pompilia for flight from her husband, proof also came to light that they had conspired in that same crime, and consequently were among the causes of the injured honor and reputation of Count Guido. And this injury to his honor had also resulted from what they had pretended and had exposed before everyone—that his wife was not their daughter, nor legitimately born, but was the daughter of a harlot.¹⁰⁵ And afterward they had received her into their home when she had been declared an adulteress. For either she was their daughter, and they ought not to deny it in Court, or else she was not their daughter, and they should not receive her into their home after she had been convicted of adultery. For in doing so they had, by that very act, declared that they had been and wished to be her panders. [Citations.]

The confession of Count Guido can not be divided from its qualification, that he had demanded the murders for honor's sake. But it ought to be accepted by the Fisc along with the said qualification, as we have proved in our information § *Huiusmodi enim confessio*. [Cf. p. cxxix.] The authorities alleged to the contrary by my Lord Advocate of the Fisc hold good in a qualification, extraneous to the confession itself and which is not therefore proved otherwise, and when there is argument for some extraordinary penalty, and we have admitted this in our information § *Præsertim*. [Cf. p. cxxx.]

But just as the plea of injured honor relieves Count Guido from the ordinary penalty for murder, so should he be excused from certain other ordinary penalties, laid in the Banns and Apostolic Constitutions against those bearing prohibited arms⁴¹³ or committing other crimes. For I have said, and I repeat, that the just anger which excuses him from the one crime should also excuse him from the others, since this reason is everywhere and always in his favor, that he was not of sound mind,⁴⁰⁴ according to what was affirmed in our information from § *Agnoscit Fiscus* [cf. p. cxxxiv], down to § *Quo vero ad litem*. [Cf. p. cxxxvii.]

And just as this cause is enough to gain for Count Guido a diminution of the penalty, so should it be considered to be sufficient likewise to gain that favor for his fellows, who as auxiliaries can not be punished with a greater penalty than the principal himself, according to almost innumerable authorities, and they of great name, who were alleged in my past argument, § *Quæ dicta sunt* [cf. p. xxxvi], with the following, and in my present argument § *Verum et Sociis*. [Cf. p. cxxvi.] To this, no response has been given by the other side.

This is all the easier as regards Blasio Agostinelli,³¹⁵ who has not at all confessed that he killed or wounded any one, but only that he was present, as we have formerly considered the matter in our information § *Quoad Blasium*. [Cf. p. cxxxviii.]

And as to Domenico and Francesco, beside what has been deduced in favor of the others, they are foreigners,⁴²³ and are therefore not bound by the Banns of the Governor (for by these, men who live outside of the District are not bound) [ccxxx] nor by the Apostolic Constitutions prohibiting the bearing of arms,⁴¹³ as we have said in our past argument § *Quae eo facilius*. [Cf. p. xxxix.]

This is all the more so since Domenico still asserts that he is a minor,^{423 424} and for this purpose he was so described in the Prosecution, page 304. And as regards Francesco, beside the abovesaid description in the same prosecution, page 35, we have the baptismal register, which conclusively proves his age. [Citations.] For he was born the 14th day of February, 1674, from which it is evident that at the time of the commission of the crime, which is to be had in regard for punishment, [Citations] he had not completed the twenty-fourth year of his age.⁴²⁴ And to one less than twenty-five years old the penalty should be diminished, etc. [Citations.]

And this indeed is of necessity, and not at the discretion of the judge, because such diminution of penalty arises by advantage of law that has been passed and from intrinsic reason, diminishing the penalty. [Citations.]

Although there are not lacking some authorities who think the contrary, namely that it all depends upon the discretion of the judge, yet our opinion is the truer and the more generally accepted in criminal causes which are not very atrocious. [Citations.] And when the crime is merely savage, or more savage, the judge is obliged by the very necessity of his duty to diminish the penalty, according to those authorities recently alleged. [Citations.]

This opinion also has a place in the crime of murder, notwithstanding the order of the text. [Citation.] "If any one should make you a defendant under the Cornelian Law, it is suitable that your innocence shall defend and purge itself by your minority." For the order of this text should be interpreted thus, namely that a delinquent who is a minor is [ccxxxi] not to be excused entirely, but is only to be punished more mildly, according to the old authorities who are cited with abundant hand by Farinacci. [Citations.]

This is especially so when, as in the present case, the delinquent minor does not sin alone, but in company with others; for then he is presumed to be seduced by them, and therefore the ordinary penalty comes to be diminished the more readily for him. [Citations.]

We do not know whither the Fisc pretends to turn for the destruction of these foundations in law, because my Honorable Lords, the counselors of the Fisc, have claimed nothing as to this matter, either in their past argument or the present one. For when they claim to escape our exception by the Florentine Statute, [Citation] that a minor of sixteen years is punished criminally, other responses are at hand:

First, that the provision of this statute does not extend to crimes committed outside of the territory of the said State, but that the place of the crime and its statutes should be attended. Then these indeed cease, as they do in the present case, because the Banns of the Governor have no place when there is argument for the punishment of a foreigner. This fact arises from defect of power in the Prince or official establishing them, according to what was alleged in the past argument § *Quae eo facilius* [cf. p. xxxix], and the one following. For then the criminal should be punished according to common law. [Citations.]

The second response is that the statute says nothing else than that a minor of sixteen years can not be punished with the ordinary penalty of the crime. Consequently it ought to hold good in our case, since we are indeed arguing about a minor exceeding sixteen years, but of one less than twenty-five years old. Such a rule should be drawn from Common Law, in view of which the said statute in such a case receives a passive interpretation. [Citations.] Caballus testifies that he saw it so practiced in diminishing the penalty to one less than twenty-five years, that is to one who was eighteen years old. [Citations.]

Finally the third response, and the one that lays the ax to the root of the tree, is that the Accused is not of the city of Florence, nor of its territory, but of the territory of Arezzo. But the city of Arezzo [ccxxxii] and its dependencies are not bound by the statutes of Florence; first because they are not called subjects, but vassals, of the said city of Florence; and, second, because the city of Arezzo has its own statutes. [Citations.] For reference is had to the ruling state, when other subject states have not their own statutes; but it is otherwise if they have them. [Citations.]

And so they are contrary, or incompatible. [Citations.]

Soccinius [Citation] bears witness of what manner these statutes of Arezzo are, as compared with those of the city of Florence, etc., and this is plain from the Rubric, etc., where it is commanded that those under twenty-five years can not be rendered liable, without certain ceremonies, as Paolo di Castro counsels. [Citation.] For from this statute it is sufficiently evident that in the said city and its environs a less age is the rule according to common law.

So far as the Fisc may have foundations, which in our feeble judgment we have been unable to guess, I pray that these be kindly communicated to me, lest the poor accused minor may remain undefended.

Finally, as regards Count Guido, I pray that notice be taken of the unfortunate condition of himself and of his noble family. For all of his family and connection have had enough to lament even to the last breath of their lives, when they look upon the ignominy brought upon them by this woman and her parents. And because of this, there has been doubt up to the very present moment whether one nearly related would go mad. And the excellent piety of our most clement Prince and Most Illustrious Lord has declared this, to whom the Accused himself with his whole heart commends himself in the arguments made in his defense, not to speak of what they may learn about it from the Anonymous Author [Pamphlet 10]. [Citation.]

DESIDERIO SPRETI,
Advocate of the Poor.

[ccxxxiii is blank in original.]

[ccxxxiv] [File-title of Pamphlet 16.]

*By the Most Illustrious and Most Reverend
Lord Governor of the City in
Criminal Cases:*

Roman Murder-case.

*For Count Guido Franceschini and his Associates,
Prisoners, against the Fisc.*

*Reply as to law, by the Honorable Advocate
of the Poor.*

At Rome, in the type of the Reverend Apostolic Chamber, 1698.

[ccxxxv]

[Letter I.]⁴⁵⁰

To the illustrious Signor, my most worshipful Signor and Patron:

Too late have arrived those proofs, which were sent to me by your Honor, on behalf of Signor Guido Franceschini of blessed memory. For when the Congregation of Monsignor the Governor had determined, in spite of the reasons given in his favor, that Signor Guido was guilty under the death penalty, I obtained, with much trouble to myself, some delay for proving his clergyship⁴² alleged by me. To this end a messenger was dispatched to Arezzo. But since the Sanctity of Our Lord [the Pope] did not deem it wise to postpone the execution of the sentence already decreed, he has seen best by special writ⁴³⁰ to make denial of any clerical privilege, which might have been claimed [in Guido's favor], and also as regards the minority of Francesco di Pasquini, one of the accomplices. Hence sentence against all five has been executed to-day, with distinction only in the manner of their death, as Guido's life was ended by decapitation. This consolation survives for his relatives and friends, that he has been pitied by all men of honor and by all good men. Confessing my own shortcomings, I can not deny feeling infinite regret, as I attribute the whole outcome to my inability in offering the valid grounds. May God reward his house and all his friends with abundant blessedness for this tragic accident. Desiring your further commands I reaffirm myself as ever

Your Excellency's most obedient servant,

Rome, February 22, 1698.

GIACINTO ARCANGELI.³⁷⁵

To the illustrious Signor, my most worshipful Signor and Patron, Signor Advocate Francesco Cencini,¹² Florence.

[ccxxxvi is blank in original.]

[ccxxxvii]

[Letter II.]⁵⁴⁰

Most Illustrious and most honorable Signor, my most Worshipful Patron:

The proofs you send did not arrive in time, because to-day finally, after so many disputes, the execution of poor Signor Guido has taken place, with the loss of his head, while the four cutthroats have been hanged. The case was decided Tuesday,⁴⁸² but because his clergyship was adduced, and on this ground it was claimed that the death-sentence had no place against him, a messenger was despatched to Arezzo later on to get proofs of it. But the Pope yesterday issued his warrant, and ordered that it be carried out completely to-day. Now that the will of God has been fulfilled that he should suffer such a punishment, it has at least been brought about, in view of the arguments made in his defense, that he died the death of a gallant man. For aside from the fact that he has died with exemplary courage,⁴³⁹ he has also been pitied by all gallant men,⁴⁴⁸ and his house has lost nothing in the matter of reputation.⁴⁴⁰ All Rome was there,⁴⁴⁷ as you may well believe. And

it has not been made good with all that has been written, and there have not been lacking admonitions of greatest consequence, since the Ambassador of the Emperor ⁴²⁹ spoke of that point on Tuesday, as he himself told me day before yesterday. And then the matter [ccxxxviii] was settled precipitately.

I have finished the argument before the Congregation of the Council, and at any time that Monsignor Secretary wishes to take it, I think we shall be ready. I pray you favor me with those copies of the process as soon as possible. And if Canon Filippo does not give us the opportunity, he should be good enough to acknowledge it to me that I may think of other measures, wishing once for all to get out of this imbroglio if it shall be possible. And finally, I remain with all reverence,

My most illustrious and most excellent Signor,

Your devoted and obedient Servant,

Rome, February 22, 1698.

GASPERO DEL TORTO.

To the most illustrious and most honorable Signor,

My dear Signor, Signor Francesco Cencini,¹² Florence.

[ccxxxix]

[Letter III.] ⁵⁴¹

My most illustrious and excellent Signor, my most worshipful Patron:

Tuesday ⁴³² this most unfortunate case was brought up and the Congregation of the Governor decided—Delay and according to instructions. The instructions were that they would await the proofs of the well-known clericate.⁴² At this favorable decision the defense took heart and Guido's good friends began to breathe again.⁴²⁸ Then last evening at eight ⁴³¹ o'clock Monsignor signed of his own accord the warrant, in denial of the clergyship so far as it might be alleged and of the minority of one of the accomplices. No sooner had he signed the warrant than the news of it sped throughout the City, and with it the assurance of the sentence, which has been executed to-day since dinner against the five; that is, the loss of his head in the case of Signor Guido, and the gallows for the other four accomplices. I will not tell your Excellency my own grief, because you yourself will be able to be a true witness of it. These proofs would have been of the greatest relevancy, but not in the present case, because Monsignor wished it so.

I inclose the Fisc's argument,¹² except a single response, which I will send to you as soon as I can lay hands on it, that your Excellency may have the entire case.

Now that Signor Advocate del Corto has abandoned his present interests I may serve your Excellency in the matrimonial case [ccxli] and in the other of Gomez.⁴⁵¹ Therefore I set myself to all that your Excellency shall write, praying evermore your continual commands, that I may ever be your Excellency's

Obedient and humble servant,

Rome, February 22, 1698.

CARLO ANTONIO UGOLINUCCI.

[ccxlⁱⁱⁱ]

Romana.

[Pamphlet 17.]

Most Illustrious and most Reverend Lord:

In the contention most sharply and most learnedly carried on between the Defenders of the Poor and the Fisc in the case of the murders committed by persons led by Count Guido Franceschini against the person of Francesca Pompilia his wife, and Pietro and Violante Comparini, I refuse to descend into the arena, lest I may seem to fail in the office which I discharge in common with the said Defenders. My silent pity has delayed and let time slip by; because I believed it would be to the prejudice of Guido and his fellows imprisoned for that offense, (in whose excuse the plea of injured honor is especially strong) if I should wish to push the defense (which was committed to me long ago) of the shame and honor of the same Francesca Pompilia; for her tender mind has been stained by no infamy arising from impure lust, and against her the suspicious husband could have made no objection, unless wife-murder had followed, as if from this he wished to prove the adultery merely because he could then kill his wife, and he killed her that she might be believed to be an adulteress.

But now since the case has been most sadly terminated as regards all of those imprisoned (for thus these things terminated which should not have been begun) I begin anew the dispute over that most unfortunate question, and assert most safely (both for the reasons fully given in my argument for exclusion of the asserted rape, which is reassumed gratuitously, and for those more fully gathered by his Honor, My Lord Advocate of the Fisc, in his very learned allegations distributed in both ⁵²⁴ presentations of the case), first that the memory of the aforesaid Francesca Pompilia should be utterly absolved from the crime of adultery, which was unjustly and all too bitterly charged upon her by her husband, and second that declaration should be made by a definitive sentence that she has never violated her marriage vow. And this is in spite of the fact that such insistence may seem incongruous. For although all crimes cease with the death of the criminal [Citations] [ccxl^{iv}] nevertheless when a crime is atrocious, and of such a nature that it involves in itself a brand of infamy, its memory ever endures. Therefore it is worth while for the principal to vindicate the fame of the authoress from the asserted crime of adultery [Citation]. Peregrini speaks as follows: "The thirteenth case is when the heirs of one dead, for the purpose of purging him from the infamy which works against him publicly on account of crime, wish that [the court] take knowledge of the crime itself, for the purpose of establishing his innocence, for this

is conceded by law." And Boss asserts: "Note that even if death does utterly remove any further penalty, yet the heirs of one who is dead may make a stand for his fame and honor, in order that a declaration may be made about that crime." And Caballus: "For although with the death of the delinquent, a crime may be said to be extinct so far as his own person is concerned, yet the heirs of the accused, in their own interest and to wipe out the infamy of the one who is dead, may petition that the court go on to give an opinion, and that it be declared that the dead one had not committed crime." And he affirms the same under the following number.

And indeed this is not without manifest reason. For just as the Fisc may go further in the investigation of a crime that had been perpetrated during the lifetime of the one now dead, even for the purpose of damning his memory, [Citations] likewise it can not be denied by the principal himself, as the beneficiary heir and successor of the same Pompilia and Pietro Comparini, that inasmuch as her innocence is evident he may insist upon carrying away a sentence of absolution; for in other cases any one at all may have a chance to defend one who is dead. [Citations.]

[ccxlv] And to delay such a judgment it is not right that the flight again be alleged, which the said Pompilia made in the company of Canon Caponsacchi, with whom she was arrested at the inn of Castelnovo. For to remove that charge it is quite enough for one to allege the judgment of this Most Illustrious Congregation, given under the date of February 18, last past, against Guido Franceschini, because of which he was publicly put to death on the twenty-second day following, notwithstanding the fact that, to avoid the penalty of wife-murder, he insisted solely upon the asserted adultery, which he claimed had resulted from the aforesaid flight from home. All suspicion whatsoever of her dishonesty ceases because of the defenses then made and because, in the very prosecution, there was apparent a very just reason, on account of which the wretched wife attempted to flee thus from the home of her husband. Nor was it for the purpose of satisfying lust with the asserted lover, but that she might go back to her own hearth and there, with her parents, might live a safe and honest life. This cause is very plainly proved by the notorious quarrels⁹⁵ which arose on account of the poverty of the domestic establishment immediately after her arrival at the City of Arezzo along with Pietro and Violante Comparini in execution of the agreement included in the marriage-contract.⁹⁸ And on account of this poverty the Comparini were obliged, after a few months,⁹⁸ to go back to the City,¹⁰⁰ with no small bitterness on account of the deception which they had detected. This is evident from the letters of Abate Paolo Franceschini, which presuppose these complaints that resulted from the said deception, and especially from the letter

written March 6, 1694: "I write again to you that I do not wish to imitate him in his manner of writing, not being of his mind to sow broadcast in my letters such words as would well merit response by deeds, and not by words. And these are so offensive that I have kept them for his reproof and mortification." And further on: "So that if you give trouble, which I will never believe, you yourself will not be exempt therefrom." It is also evident from the letters given in my past information, and especially in § *Videns igitur*, with the one following. And although this does not show the nature of the altercation, yet, since Abate Paolo has not shown the letters written to himself, the presumption presses upon him very strongly that the complaints were just and that the cause of their quarrels and altercations was well founded. [Citations.] [ccxlii]

It is also true that a very bitter lawsuit²⁶⁰ was brought by Pietro Comparini for the nullification of the dowry contract and for the proof of the pretense of birth, which had been made by Violante, the mother,¹⁰³ both to deceive her husband and to bar his creditors,¹⁰⁷ who were pressing him hard at the time.⁷² And since the dowry included all the property⁹¹ and the entire patrimony of Comparini,⁹² which was of no small value when we consider the rank of the persons concerned, controversy had indeed been raised for a considerable amount by the father-in-law. And this, as experience teaches from time to time, is accustomed to bring forth implacable hatred and deadly enmity. [Citations.] It produced indeed such an effect for this unfortunate wife, so that the love of her husband, which had long been disturbed by the preceding altercations, was finally quite extinct. And this was so to such an extent that she often found herself exposed to deadly peril because of the severity of her husband, who at times pursued her with abuse, and again even with a pistol.⁴⁷¹ And it can not be questioned that such perils are quite suited to strike fear even into any hardy man. [Citations.] Hence it can be much more affirmed of Francesca Pompilia, a girl of tender age, who was destitute of all aid, and away from her own home and her parents. [Citations.] And Mogolon [Citation] declares that the mere sight of arms, even if the one who has them does not use them nor unsheath them, is just cause for fear; and in § 7, *No. 15*, he considers the absence of relatives as a ground for fear. And D. Raynaldus [Citation], [ccxlvii] says that it is enough if one sees signs or acts of manifest desire, or such as are preparatory.

Therefore, since so many very relevant circumstances concur, on account of which Pompilia was moved to desert her husband's bed by flight, all suspicion whatsoever of dishonesty and of violated conjugal faith is utterly removed. For whenever we have two causes, one of which is lawful and permissible, while the other is iniquitous and abominable, the former is to be fully received, and thereby the charge of crime

is quite excluded. [Citations.] [And this is true] in spite of the fact that this lawful cause may seem to be excluded [first] by the letter written by Francesca Pompilia to Abate Paolo. For in the letter,¹¹² after she had thanked Abate Paolo because he had joined her in marriage with his brother, pretense is made that her parents gave her the depraved counsel to destroy the entire home and to go back to the City with her lover; [it also makes pretense] that since their departure she was enjoying a quiet and tranquil life. [Second] from the company of the Canon Giuseppe Caponsacchi, with whom she had fled; because of which he was banished to Civita Vecchia for three years.²⁷¹

For however it may be with the asserted letter, whether it is substantiated or not, and whether or not the qualification should be considered probable, which is added in her sworn testimony by the same Pompilia, namely that her husband had marked the characters¹¹⁴ and she had blackened them with ink by tracing them with a pen, because she herself did not know how to write; yet it is certain that if the letter be read attentively it will be absolutely impossible to assert that she had written it with a calm mind. For who can be found, so unmindful of filial love and duty toward parents as to persuade himself that this tender girl could have laid upon her parents such detestable crimes? Because at the time she was not more than fourteen years old, according to the certificate of baptism given in the Summary of the Fisc [cf. p. clv], in the second setting forth⁵²⁴ [ccxlvi] of the cause, No. 2. And she was away from her own home and still grieving for the very recent departure of her parents, and was badly treated in the home of her husband, as is clearly shown by the continual complaints and recourse made not merely to the most reverend Bishop,¹³⁹ but also to the Lord-Commissioner of the city.¹³⁵ Nor is it probable that she would have informed her brother-in-law, who was so very unsympathetic toward her, of these matters unless, as she has frankly confessed in her sworn examination, she was compelled thereto by her husband. Nor without very evident peril of death could she show any reluctance to him because of his excessive severity, which she had very often felt before. And as this improbability is well suited to strike horror into those who read it, so likewise it very well shows that the letter was not written voluntarily,⁴⁶⁸ but under compulsion. [Citations.] Caballus asserts that what no sane mind would approve is inadmissible. [Citation.] And indeed such excessive cunning in extorting the said letter from the wife plainly proves Guido's craft, and the fact that the letter was obtained by false pretense, in order that he might quiet the mind of the same Abate, his brother. For the latter had been harassed by continual complaints on account of ill treatment of the wife, and had not ceased to criticize Guido daily for them. [Citation.]

As to her association with Canon Caponsacchi, this likewise does not seem enough to establish the blot of dishonor. For the most wretched wife was utterly destitute of all earthly aid and had vainly entreated the authority of the most reverend Bishop,¹³⁹ and of the Lord-Commissioner,¹³⁵ to free her from deadly peril; and on account of her age and sex it was not suitable that she should flee alone or in the company of some lowborn serving woman,¹⁴⁸ for in that way she would carelessly expose herself to graver peril, as might have happened to her if she had been overtaken while alone on the journey. For then it could be said of her: "She fell upon Scylla while trying to avoid Charybdis."⁵²³ Therefore we should not be surprised if she took the aforesaid Canon as a companion. For he had been proposed to her by both Canon Conti¹⁴⁵ and Gregorio Guillichini,¹⁴⁶ who were related to Pompilia's husband. [ccxlix] And it is utterly incredible that they would have consented to such a flight if they had not known it was quite necessary to evade the peril of death, which they very well knew was threatening the luckless wife, and if they had not had strong faith in the honesty and integrity of her companion. Therefore, as such a necessity was pressing so hard upon her, her prudent choice of the lesser evil eliminates any shadow whatsoever of her pretended dishonesty. [Citations.]

[This is especially true when we] consider the manner in which the flight was executed, by taking the most direct road to the City with the utmost possible speed. And it very well shows that the sole motive was to save her life, and not to debase herself by licentious delights. For if this latter had indeed been the principal cause, she would not have gone to Rome by the shortest road,²⁰³ where she might immediately be taken by her brother-in-law and her parents, but would have gone to some more distant regions, or else she would not have gone with such swiftness, but would have delayed out of the public highway, and in a place where her husband could not find her, and where she could fulfill to satiety her lust.

This utter improbability therefore very well shows the truth of the cause for flight adduced by the wife in her sworn testimony—namely that she had gone swiftly to the City in order that she might there place her life and honor in safety in the home of her parents. For just as the strongest sentence of blame may arise from mere probability, so likewise no less presumption of innocence should arise from this improbability. [Citations.]

And this is strongly urged by the frank protestation made in the very act of arrest at the inn of Castelnuovo to the husband himself by the Canon, who rebuked him concerning this flight: "I am a gallant man, and what I have done, I have done to free your wife from the peril of death."²²⁰ So testifies Jacopo, son of the former Simon, a witness for the Fisc, in the prosecution for flight, page 50. And an example

was offered by me in my allegation as regards that flight, namely that of Scipio Africanus. [ccl] For when the beautiful young wife of Aleucius, the chief of the Celtiberi, had been captured by Scipio's soldiers, he said in restoring her to her husband: "Your wife has been with me as she would be with her own parents. Her virtue has been preserved for you so that she can be given back to you again, a gift unviolated and worthy of me and you." Titus Livius bears witness to this in his Histories, book 26, and page 493 in my volume.

And although it may be very difficult for a beautiful woman¹⁶ to preserve the decorum of her honor while journeying in the company of a young lover, yet it is not utterly impossible, as the examples seem to show, which were related in my allegation § *Quidquid dicat*. And to these I add that of Penelope, of whom Ovid sings in book 3 of his elegies: [Amores III, 4, 23.] "Although she lacked a guard, Penelope continued chaste among so many suitors."

And this is especially true since neither the journey nor the company of the Canon were voluntary, but were merely for the purpose of avoiding the peril of death. And since such necessity was present, the presumption drawn from Ovid's *Ars Amandi* is rendered still further inapplicable, namely that "From a passionate young man, can she be believed to have returned a virgin?" [Heroides, 5, 129.]

Nor do the letters²³² which were found in the closet²³¹ of the inn at Castelnuovo seem to stand in the way and hinder the sentence petitioned, and impose a blot of infamy upon Francesca Pompilia. It is claimed that these were written by her to the Canon on account of the very devoted love with which she was pursuing him. But the exceptions and responses made in the past informations hold good. The first is that they were not acknowledged by her, nor was the identity of the handwriting proved; and some uncertainty is still present, since it is not evident to whom they were directed; nor would it be improbable that they might have been framed by the husband.²³³ For he was present at the capture and search²³¹ and hoped, indeed, that therefrom might result more readily the fixing of the crime of adultery. And he insisted very strongly upon this, in order that he might gain the desired dowry and lucre.⁴⁶ This mere possibility to the contrary is enough to avoid the proof, which it is claimed may be drawn from them. [Citations.]

[ccli] The second response is that, even though such exceptions as the above might not hold good, yet no proof of violated conjugal faith and of dishonor can be drawn from these letters. For even though proof of adultery may result from love letters, it is utterly excluded in our case when we see that they were directed to a licit end,²⁴⁷ namely toward soliciting the Canon that he might afford her aid in her flight and that she might avoid deadly peril. For then, just as the end is permissible, so should the means also be considered lawful and per-

missible, even though suspicion is not lacking; for these should be considered, not in themselves, but on account of their end. [Citations.] But indeed, unless from the love letters themselves there result an implicit confession of fornication, proof of adultery can not be drawn from them. [Citations.]

It should be specially noted that she had very strong confidence in her own continence and in the integrity of the Canon. And she trusted him much, and hoped that he would conduct himself modestly during the journey, since it is evident from these same letters that she had found fault with him for his freedom once: "And I marvel that you, who have been so chaste, have composed and copied matters that are so dishonorable." And further on: "But I would not have you do in any case as you have done in these books. The first of them is honorable, but the other octaves are quite the contrary. I can not believe that you, who have been of such honor, have become so bold." For such sincere objurgation and the very tenor of the letters, in which no dishonesty is read, clearly show and declare the spirit of Pompilia, who wrote them. For just as words are to be understood according to the thought of the one proffering them, so likewise should letters be interpreted according to the intention of the one writing them. [Citations.]

[cclii] Since therefore the honor and modesty of Pompilia is vindicated from the flight and the letters, of still lighter weight are the other proofs of pretended dishonor. These are deduced from the approach of the Canon to her home¹⁷⁰ for the purpose of speaking to her; from the insidious manner in which the flight was prepared and put into execution, by means of an opiate¹⁹⁶ administered to her husband and the servants; from their mutual kisses on the journey;²⁰⁶ and from their sleeping together at the inn of Castelnuovo.²¹⁵ For beside the general response that no conclusive proof is offered for all these, such as would be necessary to establish Pompilia as guilty of adultery, there is a separate response for each of them.

The entry and egress at night time¹⁷⁰ into the home of Francesca rests merely upon the deposition of a single witness, Maria Margherita Contenti,¹⁷¹ who is under two very relevant exceptions: namely those of singleness and of harlotry.¹⁷² Her word therefore can impose no blot of infamy. [Citations.] And since such approach would tend toward the single end of arranging for the flight and rescue of the unfortunate wife from the very imminent peril of death, it should not be presumed to be for an evil end. For when an express cause is plainly present, to which a matter may be referred, and this cause is entirely lawful, the matter should not be attributed to a cause that is illicit and criminal. [Citation.]

The insidious manner, also, whereby Francesca Pompilia put into execution the flight, by preparing an opiate¹⁹⁶ for her husband and all

the household (aside from the fact that it is not proved), would afford proof of sagacity rather than of dishonor, even if it were proved. For the wife would have been very foolish if she had attempted flight without such a precaution.¹⁹⁷

Under the same lack of proof labors the asserted mutual kissing during the journey;²⁰⁶ for that proof is entirely too slight, which is pretended to result from the deposition of a single witness of the lowest class. [ccliii] Especially since his word is shown to be too much prejudiced; for he swears that, while he was driving the carriage swiftly at night time, he saw Francesca Pompilia and the Canon kissing each other. Nor does he give any reason, as that the moon was shining, or that some artificial light was present to dispel the darkness. Inasmuch as such a detail is necessary in a witness who is testifying about a deed at night time, its omission takes away all confidence in him. [Citations.] For there is to be added another very strong improbability, namely that, while he was driving the carriage with such velocity that it seemed to fly rather than to run, he could see their mutual kissing by looking backward. Still more is this improbability increased by the very word of this same witness, since he swears that he had driven Pompilia without knowing that it was she, until afterward, while returning to Arezzo, he had met Guido Franceschini, her husband, following her. Because if he had seen her kiss, he would have recognized her straightway, since he had often seen her before and she was well known to him. And therefore it should be absolutely declared that, either influenced by the tedium of his secret prison,²⁰⁷ he had been compelled to swear so, or, as is more probable, since on account of the very great speed of the carriage the bumping together of those seated therein might chance,²⁰⁸ he had believed that this chance jostling of their heads and faces was for the base purpose of kissing. Hence the proof arising from his deposition was justly held in contempt in the prosecution for flight. And it would have been considered if it had had any probability.

Finally the proof of dishonor drawn from the asserted sleeping together in the same tavern at Castelnuovo, is far weaker, since it was constantly denied by both Pompilia and Caponsacchi in their testimony. And only a single witness, the house-man of the same tavern, swears to it; and this also not from certain knowledge, but presumptively, [ccliv] because they had asked him for a room with a single bed. Canon Caponsacchi frankly confesses why he had ordered that only a single bed should be prepared—namely that Francesca Pompilia, who was worn out because of ill-health^{213 218} and the discomfort of their precipitate journey, might rest a little, while he himself kept guard.²¹⁴ Such an act should not be assigned to an illicit cause, as Cravetta [Citation] advises in such circumstances. And, in No. 15, he says that interpretation should always incline to the humaner side, even when the rigorous

side may seem the more likely. And the same author continues thus in *Nos. 20 and 21*. For it would not suffice as a full proof of adultery that any one be found alone and naked with her alone and naked, and that a young man be found unclothed and with shoes off in a closed chamber with a woman. Much less can such proof arise from a very brief delay in the same chamber for the purpose of keeping watch.²¹⁴

Very slightly does it stand in the way that Francesca Pompilia, in her cross-examination, concealed this delay by asserting that she had arrived at the tavern at dawn.²¹² For she was very well aware of the credulousness of her husband, and possibly asserted this to avert further suspicion of violated honor, which certainly might have arisen if she had confessed that she had spent a longer time in the tavern. As even if she had not denied such a stay, the confession under circumstances that still argue for the preservation of her modesty would not have been to her prejudice, so likewise the lie can do no injury. [Citations.]

But all suspicion of pretended dishonor is quite eliminated by the assertion of the most unfortunate woman, which was made in the very face of death, after many severe wounds had been inflicted upon her by her husband. [For she declared that] she had never sinned against her marriage vow,³⁵⁵ as is very evident from the numerous depositions of religious men,³⁵³ who ministered to her in death. They assert that they heard her continually praying that she might be given no forgiveness by the Divine Clemency for such a sin.³⁵⁶ This assertion made in the very face of death, [cclv] deserves all faith,³⁶² since no one placed in that condition is presumed to be so unmindful of eternal safety as to be willing to lie. [Citations.]

Finally, no foundation for accusing the memory of Francesca Pompilia of dishonesty can be established upon the asserted decree of this most Illustrious Congregation, by whom Canon Caponsacchi was condemned to three years' banishment in Civita Vecchia,²⁷¹ with a statement made of his running away and criminal knowledge of Francesca Pompilia. For, as the Fisc himself admits, there was demanded by me, though not *in extenso*, the modification of that title by the honorable Judges, with the approval of his Excellence the Governor. And therefore, in the order for imprisonment, these words were suppressed and others were put in their place: *Pro causa de qua in actis*.

All further difficulty is removed from the mere consideration that such a decree had been issued, while no defenses had been made for Francesca Pompilia, and while she was still utterly without a hearing. For she had not the slightest knowledge of it, since she had not been notified. But in the decree for the assignment of the home as a prison, only a cause relative to the trial was expressed. Hence it could not injure her, since it was issued against a third party⁵³⁴ while she herself had not been cited. [Citations.] And in the circumstances that a

sentence given against an adulterer can do no injury to the adulteress when she has not been cited, is the text [Citations]: "If he is condemned, the wife is not condemned thereby, but shall carry on her own case." [Citation.]

This is especially true since we are not now contending to free the husband from wife-murder, and to infer a just cause apart from belief [cclvi] in the dishonor of the wife resulting from the said decree, and which would excuse him from the penalty of the Cornelian law. In this case, the changing of the said decree might possibly serve for an escape. But we are contending about the damning of the memory of a woman now dead, and about rescuing her and her family from infamy. And in the latter case just as such a harsh decree could not injure her during her lifetime, so likewise it can not do her injury after her death.

ANTONIO LAMPARELLI, *Procurator of Charity.*

[in old writing]

And according to the letter of Carolo Antonio Ugolinucci, May 17, 1698, I understand that the criminal court after two votes, decided on absolution.

[cclvii is blank in original.]

[cclviii] [File-title of Pamphlet 17.]

*By the Most Illustrious and Most Reverend
Lord Governor in Criminal Cases, or by
the Most Excellent Lord Venturini.*

Roman Lawsuit.

*For the Heir-beneficiary of the former Francesca
Pompilia, formerly wife of the former Guido
Franceschini, against the Fisc and
Associates in the Lawsuit.*

*Memorial of Fact by the Honorable Procurator
of the Poor.*

At Rome, in the type of the Reverend Apostolic Chamber, 1698.

[cclix] INSTRUMENT ⁴⁵⁶ OF FINAL JUDGMENT.

[Pamphlet 18.]

Given for the restoration ⁴⁵⁷ of the good name and reputation of Francesca Pompilia, now dead, formerly the wife of Guido Franceschini of Arezzo, now dead; for acquittal in favor of Domenico Tighetti, as an heir beneficiary of the same Francesca Pompilia, from all disquietude, ³⁶⁴ all molestations, vexations, and perturbations, brought or threatened to be brought by the Venerable Monastery of Saint Mary Magdalene of the Convertites ²⁷⁷ in the Corso; together with the citations lawfully executed in observation of the four terms to instruct themselves as to the appeal and its legal prosecution, in order that the same sentence might pass on, as it has passed on, to judgment, because no appeal has been interposed.

In the name of God, Amen.

September 9, 1698, under the sixth declaration in the eighth year of the Pontificate of the Most Sacred Father in Christ, etc., Innocent XII, Pope by Divine Providence. This is a copy or transcript of the citations made by my own act, and written below, and of the sentence rendered respectively of the following tenor, namely:

The Most Reverend and Most Illustrious Governor in Criminal Matters: ⁴⁵⁴

Let the undernamed principals on the other side be cited, etc., to appear in the Criminal Court to-morrow, which will be the nineteenth day of the current month, at the accustomed hour of convening court, lest it seem good that each and all the terms be repeated as ill founded, and that they therefore are to be held and observed as null and void in their force for any powers whatsoever, and lest the one so insisting be freed from censures, so far as, etc., it be concluded, or seem best to be concluded in the case, [cclx] and that the final sentence be heard in due form according to the aforesaid insistence by Domenico Tighetti, heir-beneficiary of the former Francesca Pompilia, the wife of the former Guido Franceschini, as Principal, or, etc.

NOTARY FOR THE POOR.

The Most Illustrious Francesco Gambi, ⁴⁵⁵ Procurator General of the Fisc, and of the Reverend Apostolic Chamber.

The Honorable Giovanni Maria Serbucci, Procurator and Manager of the lawsuit brought by the former Guido Franceschini.

The Honorable Francesco Paracciani, Procurator of the Venerable Monastery of St. Mary Magdalene of the Convertites in the Corso.

Against the Procurator General of the Fisc, etc. He says that no sentence can be given, unless in favor of the Fisc, and so far as, etc., insists that he be granted delay for the purpose, and in the meantime they can not go on to any expediting of the cause, except for reason given in full court, and by the vote of the Lords thereof, and by testimony of the opposition in prison, and without citing all who have interest, etc., this 18th day of August, 1698.

FRANCESCO GAMBI,
Procurator General of the Fisc.

I have made the above citation against the Fisc personally this day, and against the others by copy, which was sent to their homes, this August 18, 1698.

BALATRESIUS.

ALOYSIUS PICHIVS, *Substitute for the Fiscal General.*

AUGUST 19, 1698.

When he had made statement of fact, Antonio Lamparelli, Procurator, presented his case and petitioned as above. Thereupon the Most Illustrious and Most Excellent Lord, Marcus Antonius Venturinus, J. V. D.,^{456 270} who holds the judicial bench, for the Most Illustrious and Most Reverend Governor of our dear City in criminal cases, gave sentence, as in this schedule, which he has taken in his own hands, has seen, read, and subscribed, and given and consigned to me as a notary for publication of the following tenor, etc., in the presence of Antonio Bernardino Piceno and Antonio Toparino of Caprarola, witnesses, etc.

In favor of Domenico Tighetti, in the name, etc., against the Fisc and those consorting with him in the suit.

In the name of Christ, whom we have invoked, we who sit for this Tribunal, and who have only God before our eyes, give this as our definitive sentence, which we offer in these writings by the advice of those skilled in law, in the cause or causes which have been tried before ourselves in the first place, or in the second, and which are now being considered, between Domenico Tighetti, as the heir-beneficiary of the former Francesca Pompilia, the wife of the former Guido Franceschini of Arezzo, on the one part; and the Fisc and Giovanni Maria Serbucci as Procurator and Manager of the lawsuit of the former Guido Franceschini, and Francesco Paracciani, Procurator of the Monastery of Santa Maria Magdalena of the Convertites in the Corso for all their rights and parts in that interest, on the other part; concerning and upon the pretended adultery committed by the said former Francesca Pompilia with Canon Giuseppe Maria Caponsacchi,

and as regards other matters in the conduct of the cause or causes of this kind, [cclxi] more fully deduced, etc. By authority of the decree for the remission of the case, which was made by the Most Illustrious and Most Reverend Auditor S. S., by the acts of Pascasius, concerning which in the conduct, etc., and for cause given in the Court, and by vote of the same, we say, pronounce, declare, and finally adjudge from what has been newly deduced, that *proof is not established as regards the pretended adultery*, and therefore the memory of the same Francesca Pompilia should be and is *entirely* restored to her pristine good name and reputation; and that the same Domenico Tighetti, in whose name the above was deduced, should be and is absolved and liberated from each and all disquietudes, molestations, vexations, and perturbations brought, or threatened to be brought, by occasion of these, as on account of the statement of these we have restored, absolved and freed him, as above. And for this restitution and absolution and freedom, we wish and command that it be held as law that the suit or suits, of whatever nature, which have been brought thereupon be abolished, as we abolish them. And we charge that perpetual silence be imposed upon the Fisc and his consorts in the suit. And we have thus spoken, pronounced, declared, and finally given sentence, not only, etc.

I, Marcus Antonius Venturinus, who hold the judicial bench have so pronounced.

Given on this 19th day of August, in the presence of Antonio Bernardino Piceno, and Antonio Toparino of Caprarola, Witnesses, etc.

By the Most Illustrious Governor of the City in criminal cases, or the Most Excellent Lord Venturini.

Let the undernamed be cited for learning the appeal, and its lawful prosecution for the first time, at the aforesaid instance of Domenico Tighetti, as Principal Heir-Beneficiary of the aforesaid Francesca Pompilia, formerly wife of Guido Franceschini:

CHARITAS.

The Honorable Giovanni Maria Serbucci, as Procurator and Manager of the legal proceedings of the said former Guido Franceschini, as principal on the other side.

The Honorable Francesco Paracciani, the Procurator of the Venerable Monastery and Convent of St. Mary Magdalene of the Convertites in the Corso for all, etc.

I have made the said citation at his home, August 31, 1698.

MOLINELLUS.

September 1, 1698.

When we had made statement of fact, R. D. Alexander Cassar, Substitute Procurator of Charity, appeared, petitioned, and was granted, as above.

By the Most Illustrious Governor of the City in criminal causes, or by the Most Excellent Lord Venturini.

Let those named below be cited for learning of the appeal and its legitimate prosecution this second time, at the aforesaid instance of Domenico Tighetti, heir-beneficiary of the former Francesca Pompilia, formerly wife of the former Guido Franceschini, Principal, or, etc.

CHARITAS.

[cclxii] D. Giovanni Maria Serbucci, as Procurator and Manager of the lawsuit brought by the former Guido Franceschini, as the Principal on the other side.

D. Francesco Paracciani, Procurator on the other side for the Venerable Monastery and Convent of St. Mary Magdalene of the Convertites in the Corso, for all, etc.

September 1, 1698, I have made this.

MOLINELLUS.

By the Most Illustrious Governor in criminal causes, or by the Most Excellent Lord Venturini.

September 3. When he had made statement of fact, R. D. Alexander Cassar, Substitute Procurator of the Poor, appeared, petitioned, and was granted, as above.

Let those named below be cited for learning of the appeal and its lawful prosecution, this third time, at the aforesaid instance of Domenico Tighetti, heir-beneficiary of the former Francesca Pompilia, wife of the former Guido Franceschini, as Principal, or, etc.

CHARITAS.

D. Giovanni Maria Serbucci, as Procurator and Manager of the lawsuit brought by the former Guido Franceschini, as principal on the other side.

D. Francesco Paracciani, Procurator of the other side for the Venerable Monastery and Convent of Santa Maria Magdalena of the Convertites in the Corso, for all, etc.

I made this September 3, 1698.

MOLINELLUS.

September 4, 1698.

When he had made statement of fact, R. D. Alexander Cassar, substitute Procurator of the Poor, appeared, petitioned, and was granted as above.

By the Governor in criminal causes, or the Most Excellent Lord Venturini.

Let those named below be cited for learning of the appeal and its lawful prosecution, this fourth time, and of the final presentation, and the decree, etc., at the aforesaid instance of Domenico Tighetti, heir-beneficiary of the former Francesca Pompilia, formerly wife of the former Guido Franceschini, as Principal, or, etc.

CHARITAS.

D. Giovanni Maria Serbucci, as Procurator and Manager of the lawsuit brought by the former Guido Franceschini as Principal on the other side.

D. Francesco Paracciani, as Procurator of the Venerable Monastery and Convent of St. Mary Magdalene of the Convertites in the Corso, for all, etc.

I have done this, September 4, 1698.

BALATRESIUS.

September 5, 1698.

When he had made statement of fact, R. D. Alexander Cassar, Substitute Procurator of the Poor, appeared, petitioned, and was granted, as above.

I, Domenico Barlocchi, Notary of the Court of Criminal Causes of the Most Illustrious and Most Reverend Governor of the City, as Notary for the Poor, have found this copy correct by collating it, although it was extracted from the original documents by one who is trustworthy in my eyes, etc. In pledge of the above, I have subscribed and have published it, as I am required to do.

[The seal of the said Notary.]

The Secondary Source
of
The Ring and the Book

A Contemporary Manuscript Pamphlet.

NOTE.

“The following pages contain a MS. contemporaneous account of the execution of the principal actors in the tragedy which has been immortalized in the poem of *The Ring and the Book*.

“I am enabled by the kindness of my friend, Mr. Browning, to give it a place in these *Miscellanies of the Philobiblion Society*.”

JOHN SIMEON.

(I shall not attempt to say with what a feeling I correct proof-sheets received on the day subsequent to that which brought the intelligence of the death of this great-hearted and noble-minded man, characteristically good and gracious to the very last.)

R. B., May 24, 1870.

The above words are the introduction by Sir John Simeon and the comment by the poet (*Philobiblion Society Miscellanies*, XII, 1868-9), on the reprint of the subsequent pamphlet in the original Italian.

It was found in London by one of Browning's acquaintances, who, knowing the poet's interest in the subject, sent it to him. Internal evidence indicates that it was probably written (but not published) some few years after the crime, and it is more popular in style than any part of the *Book*. The writer during the first half of his pamphlet follows closely the affidavit of *Pompilia* and the second anonymous pamphlet [No. 15] of the *Book*. He then adds much interesting information as to the murder and the pursuit, arrest, trial and execution of the criminals. Browning uses almost every scrap of additional information it affords. He accepts its fact with the same fidelity he shows in using the *Book*, and uses it extensively and without discounting its value as compared with the official record. It is therefore treated as an essential portion of the present source-study. Its new matter will be indicated by italics in the following translation.

Mrs. Orr has published somewhat less than half of the pamphlet in her *Handbook in translation*, which has been reprinted in the *Camberwell Browning*, and in the *Browning Guide Book* by G. W. Cook. The present version is made directly from the Italian text of the *Philobiblion Society* reprint.

THE DEATH OF THE WIFE-MURDERER GUIDO FRANCESCHINI, BY BEHEADING.

Guido Franceschini, a nobleman of Arezzo³⁷ in Tuscany, had stayed for some time here in Rome in the service of a person of some eminence.³⁹ He decided to take a wife with dowry enough to be of advantage to his own house. When he had revealed this desire to a certain hairdresser⁷⁸ near the *Piazza Colonna*, she proposed to him the Signora Francesca Pompilia, thirteen years of age, the daughter of a certain Pietro Comparini and Violante Peruzzi. For beside the promised dowry she was heir to the reversionary interest in bonds and other properties worth about 12,000 scudi. When he had heard of this advantageous dowry, which seemed to him to be quite to his point, he lost no time in revealing it to his brother Abate Paolo, who had dwelt here in Rome for many years in the service of a Cardinal. He went along with Guido to the mother⁷⁹ of the young woman, as they flattered themselves that they would succeed better in this way than by demanding her of the father, who was somewhat hard to approach. When they had made it appear that their income was of considerable amount, they succeeded in their intent; although it was then found out that their entire capital did not amount to the total of their income, as given in that note.⁸²

It was easy for Franceschini to win over this woman,⁸⁰ as *she was driven by the ambition of establishing her daughter in the home of persons of good birth*. She gave her own consent, and so worked upon her husband⁸¹ as to induce him to sign the marriage bond. Then when Comparini had been informed by a person who knew the resources of Franceschini, that they were quite different from what they had been represented to him,⁸³ he changed his mind, nor did he wish under any consideration to carry out the marriage.⁸⁴ *He gave as a pretext the very tender age of his daughter*, along with other reasons. The mother of Francesca, however, not seeing any chance to give her daughter to Franceschini, had her secretly married during December, 1693, in *San Lorenzo in Lucina*.⁸⁵

When this marriage reached the ears of Comparini, he was much angered at Violante.⁸⁷ But she had such a gift of gab that Comparini not only agreed to it,⁸⁸ but beside the dowry of 2,600 scudi,⁹¹ *on which he had already paid 700 scudi, he also made gift of his entire possessions to the couple*.⁹⁰

After several days, Franceschini decided to conduct his wife and her parents back to Arezzo, *and this took place in the same December*.⁹⁸ When they had arrived there, the parents of the wife could see that the state of their son-in-law was much worse than they had imagined it.⁹⁵ Therefore they were all the more embittered by the penuriousness they showed in the food, and in many other matters. *One morning while they were at the table they heard their daughter denied fire for warming her bed*, and saw the Franceschini practice many other cruelties toward her. They were much troubled at it, and *all the more so when they saw a Canon of the Franceschini household*,⁵¹ *a brother of the husband, rush upon their daughter. He struck Francesca with a dagger in his hand, who had to make her escape by running into a room and shutting the door. Then one evening her father went to visit a friend, and when he had come back home he*

found the door shut. Therefore his daughter, who was still awake, was obliged to go downstairs to open it for him, but not without first having called her husband, who never even opened an eye. Then when she had gone down to open the door and had gone outside a few steps to meet her father, all of a sudden she found herself shut outside the house along with her father. For that reason they were both of them obliged to sleep outside of the house that night, her father at the inn and the daughter at one of the neighbors. Therefore, more and more, as the days passed, the Comparini decided to return to Rome.¹⁰⁰ But as they were without money they were obliged to beg it of Franceschini, who scarcely gave them the necessary expenses of the journey.⁹⁹

When the old Comparini had departed, Franceschini thought to hide what had happened. He constrained his wife to write¹¹² to Rome to the Abate, his brother, to tell him that she cherished in her heart his memory. This letter was dictated by the husband himself. The ignorant girl did as Guido wished, whose purpose was to have it believed that his parents-in-law were the fomentors of the dissension which prevailed between the couple and the relatives of Franceschini.

When the Comparini had reached Rome, ill-contented as they were with the house of their son-in-law, for whom they now saw they had sacrificed their daughter, they did not know how to hold their peace about that matter, of which they themselves had been the cause. All the more so when they were harassed for the remainder of the dowry, beside the fact that they saw the rest of their property in danger. While affairs were in this state a Jubilee¹⁰² was announced; under these circumstances Violante Comparini revealed in confession¹⁰³ that Francesca Pompilia, who was married to Franceschini, was not their daughter, but that the birth had been pretended. She had in fact been born of a *poor widow, a foreigner*,¹⁰⁵ and had then been adopted to bring it about that the reversionary interest⁶⁸ would fall to their house, and hence to make good the many debts of her husband.¹⁰⁷ *When the confessor heard this, he charged her to reveal all the affair¹⁰⁴ to her husband himself. Violante obeyed, and Comparini was greatly surprised at it, and rebuked his wife sharply.* He then submitted the matter to judgment before Monsignor Tommati,²⁶² and the following was spoken in sentence: It should be maintained that Francesca Pompilia shall be and is in quasi-possession of her relationship as daughter.²⁶³ Therefore appeal²⁶⁴ was taken by the Comparini to the Tribunal of the Sacred Rota, but the suit still remains undecided.²⁶⁵ In the meantime the Franceschini, seeing that they had been deluded by this circumstance, since they could not get possession of the residue of the dowry, redoubled their cruelties to the poor Pompilia even to the point of threatening her with death. Hence she was very often obliged to save herself by fleeing into some other house, or before the authorities,¹³⁵ or even into the presence of the Bishop,¹³⁹ *whom she finally begged to save her by putting her in some monastery.* But this prelate thought it better to send her back¹⁴² to her husband's home, urging him not to mistreat her.

When the unfortunate woman saw that the admonitions of this Bishop had been useless, and that this way of softening the heart of her husband and his relatives had proved vain, and when they reproved her for sterility¹¹⁶ and for coquetry,¹²³ and for other faults of their own imagining, she betook herself to an Augustinian, Romano,¹⁴⁴ that he might write to his Superiors or to her parents to find some provision for her. But although the Father promised to do as she desired, his letters never reached their destination. The wretched woman was therefore desperate, and determined to get to Rome in some manner or other. She told the whole matter to Canon Conti,¹⁴⁵ a relative of the Frances-

chini, to whom she made a most pathetic picture of her situation. He was moved thereby, and answered that he would aid her, as he did by offering to have her taken to Rome by Canon Caponsacchi, his friend, since he himself ought not and could not do it. When the circumstances had been told to Caponsacchi,¹⁸⁹ he was opposed to it for fear of incurring the anger of the Franceschini;¹⁸⁹ but when he had been urged both by Conti and the woman, he consented thereto. And on the last Monday of April¹⁸⁴ the wife arose from bed as soon as day dawned,¹⁸⁸ without her husband knowing about it. She took some things of her own,²⁰⁰ some jewels, and money, left the house, and at the gate of the city found Caponsacchi, who was awaiting her with a carriage.¹⁹² They mounted together and set out on the road toward Rome.

When Franceschini awoke and discovered the flight of his wife, as he already suspected that she had started for Rome, he began to pursue her, and on the following Tuesday [should be Wednesday] overtook her at Castelnuovo in the post-house,²¹⁰ where she was in company with Caponsacchi. The young woman was not at all terrified at the sight of her husband, but on the contrary she mustered her courage and reproved²²⁸ him for all the cruelties practiced upon her, because of which she had been forced to this step. Then Franceschini was thunderstruck, and did not know how or what to respond. Hence he thought it best to have recourse to the authorities. The fugitives were arrested by the Governor of the place, and both of them were taken to Rome and placed in the New Prisons,^{255 245} and were charged with adultery because they had run away together. He tried to prove the charge by certain love-letters²³² which had been found, and by the deposition of the driver.²⁰⁶ But as the adultery was not proved, the Canon was condemned for three years to Civita Vecchia, and the wife was shut into the monastery of the Scalette²⁷⁶ on the Lungara.²⁷⁸

When the husband therefore saw that this had not helped him in gaining the dowry, he decided to go back to his own country,²⁵⁶ leaving the care of his case in the hands of his brother, the Abate, who was in the service of a Cardinal. But although the Abate tried by many a turn to succeed in his intent before the tribunals, he could not achieve it. Hence he also decided to leave Rome. And he was spurred all the more by its becoming known that his sister Pompilia was with child.²⁸³ For this reason, the Governor of Rome had constrained him to consent that she should keep her own home as a prison,²⁸⁴ under security of 300 scudi to present herself at every demand of the Tribunal. The Abate indeed was unwilling to give his consent²⁸⁸ unless Pietro Comparini should first assume obligation, by an official document, to furnish her with food.²⁸⁷ *And then, when he had obtained the permission of his Cardinal, he sold his furniture and books, and when he had made them pay over the 47 scudi which had been found upon Pompilia at Castelnuovo he left Rome.³⁰⁴ After that Pompilia bore a son,²⁹⁹ whom she named Gaetano,²⁰ after the saint to whom she made her vows.*

Franceschini, who was now overwhelmed with manifold troubles, and was urged on now by honor and again by self-interest to take vengeance, at last yielded to his base thoughts and planned to kill his sixteen-year-old wife and her parents. When four other criminals had been admitted to the scheme, he left Arezzo and on Christmas eve reached Rome.³¹⁷ *He stopped at Ponte Milvio,³¹⁸ where there was a villa of his brother. There he remained in hiding with his followers until a time opportune for the execution of his designs should come.*

They spied out all the ways of the Comparini family, and on January 2,³¹⁹ which was Thursday,³⁰¹ at about seven o'clock³²⁰ in the evening, he approached the Comparini home with his companions. He left on guard at the street door

Biagio Agostinelli³¹⁵ and Domenico Gambassini, and knocked at the door. When he had said that he brought a letter of Canon Caponsacchi³²¹ from Civita Vecchia the door was opened to him. Immediately this cutthroat Franceschini, assisted by the other two criminals, leaped upon Violante who had opened it³²³ and struck her dead to the ground. Pompilia in this crisis³²⁵ extinguished the light, hoping thus to escape the assassins, and ran to the neighboring door of a locksmith crying out for help. But when she saw that Franceschini was provided with a lantern she went to hide under the bed; but she was dragged from there, and was barbarously slain with 22 wounds³²⁶ by the hand of her husband. Not content with that, he dragged her to the feet of Comparini,³²⁸ who was likewise wounded by one of the other assassins, and was crying out "confession."³²⁴

When the uproar of this horrible slaughter was heard abroad,³³¹ people ran thither, but the criminals succeeded in escaping. But in their haste one of them left his cloak, and Franceschini his cap,³³⁶ which betrayed him afterward. The unfortunate Francesca Pompilia, under the burden of such wounds as those with which she had been cut to pieces, implored the Holy Virgin³⁴⁹ for the favor of confession, and obtained her prayer. Hence she survived some little while and was able to tell about this horrible crime. She told that after the deed was done her husband had asked of one of the cutthroats who had done the murder with him, if she were indeed dead. When that one had assured him, he replied: "Let us lose no time,³⁵⁰ but return to the vineyard." And so they made their escape. In the meantime the police had been summoned, and came with a captain. A confessor was quickly called and also a surgeon who gave his attention to the luckless girl.

When the Governor had been informed of the outcome, he immediately despatched Captain Patrizi to arrest the criminals. When the posse²²⁵ arrived at the vineyard,³⁵⁵ he found that these were no longer there, but that about an hour ago they had left in the direction of the highway. Then Patrizi followed without interrupting his journey, and when he had reached the inn he learned from the host that Franceschini had demanded horses with threat of violence,³⁵⁵ but they had been denied him, because he lacked the necessary order.³⁵⁷ Hence he had traveled afoot with his companions toward Baccano.³⁴⁰ Patrizi continued his march, and after taking the necessary precautions arrived at the tavern of Merluzza.³⁴⁶ There he found the assassins, who were straightway arrested. On them were found, still stained with blood,³⁴² those daggers with which they had done the murders, and upon Franceschini were found 150 scudi in money. This arrest indeed cost the life of Patrizi,³⁴⁶ because having been overheated and wounded with a slight scratch he died in a few days.

Franceschini's dagger was of a Genoese pattern,⁴¹⁴ triangular, and with certain hooks made in such a way that in wounding they could not be drawn from the wound without such laceration as to render the wound incurable.

When the criminals were known to be at Ponte Milvio, in that very inn they were heard on their preliminary examination by notaries and judges sent there expressly, and satisfactory confession was had.

When the capture of the delinquents was known in Rome, a countless throng of people rushed thither to see them, while all the criminals were tied to their horses and conducted to Rome. It is told that Franceschini, while making the journey, asked one of the officers how in the world the crime had ever been discovered.³⁴⁴ And when he was answered that his wife, whom they had found still living, had revealed it, he was so astounded that he was, as it were, deprived of his senses. About five o'clock in the evening³⁴⁷ they reached the prisons.³⁴⁵ A certain Francesco Pasquini, of the town of Castello, and Alessandro Baldeschi of the same town, both

of them 22 years old,⁴³⁴ along with Guido Franceschini had been the slayers of the Comparini. And Gambassini and Agostinelli were those who had stood guard at the street door.

In the meantime there were exposed in San Lorenzo in Lucina⁵⁷ the bodies of the assassinated Comparini, who were so disfigured, and especially the wife of Franceschini, by wounds in the face³⁵² that they were no longer recognizable. The unfortunate Francesca, when she had taken sacrament and had pardoned her murderers, and had made her own will, died, not yet having completed her seventeenth year. This was on the 6th,³⁵⁰ which was the day of the Epiphany. She was able to justify herself against all the calumnies inflicted by her husband. The surprise of the people at seeing the said bodies was great, because of the atrocity of the deed, which truly made them shudder, seeing that two old septuagenarians⁶⁴ and a young girl of 17 years had so wretchedly perished.

As the trial of the criminals advanced, there were many arguments made on the matter, laying stress on all the more aggravating circumstances which accompanied this horrible massacre. Others also were made in the defense with much erudition, especially by the Advocate of the Poor, who was a certain Monsignor Spreti. He succeeded in delaying the sentence, because Baldeschi³⁹⁰ made denial, even though "the cord" was administered to him twice, under which he swooned. Finally he confessed, and the others did likewise. They also revealed that they had planned to kill Franceschini himself,³⁸⁸ and to rob him of his money, because he had not kept his word to pay them as soon as they left Rome.

On February 22 was seen in the Piazza del Popolo⁴⁴² a great platform with mannaia, and two great gallows,⁴⁴¹ which had been built for the execution of the criminals. Many stands were constructed for the accommodation of those curious to see such a terrible execution,⁴⁴³ and so great was the concourse of people⁴⁴⁷ that some windows brought as much as six dollars each. At the eighth hour [2 a. m.]⁴³⁴ Franceschini and his companions were informed of their death and were placed in the Consorteria. There they were assisted by Abate Panciatichi and Cardinal Acciajoli,⁴³⁵ nor did they delay in preparing themselves to die well.⁴³⁷ At the 20th hour⁴³⁵ [2 p. m.] the Company of Death and of Pity arrived at the Prisons. The condemned were made to go downstairs⁴³⁸ and were placed upon separate carts to be drawn to the place of execution.

The first to mount the cart was Agostinelli, the second Gambassini, the third Pasquini, the fourth Baldeschi, and the fifth Franceschini, who showed more intrepidity and composure⁴³⁹ than the others, to the wonder of all.

They left the Prison⁴⁴⁰ and followed the Pilgrims Street, the Street of the Governo, of Pasquini, Piazza Navona, the Pantheon, Piazza Colonna, and the Corso.

The first who was executed was Agostinelli, the second Gambassini, the third Pasquini, the fourth Baldeschi, and the last Franceschini.⁴⁴⁴ When the last named had mounted the platform, he asked pardon for his sins, and begged them to pray for his soul, adding that they should say a Pater, an Ave, and Salve Regina for him.⁴⁴⁵ When he had made the confessor announce that he was reconciled, he adjusted his neck upon mannaia and, with the name of Jesus on his lips, he was beheaded. The head was then shown to the people by the executioner.

Franceschini was low of stature,⁴⁵ thin and pallid, with prominent nose, black hair and a heavy beard, and was fifty years of age.⁴⁴ He wore the same garb as when he committed the crime—that is a coat of brown cloth, black shirt, a vest of goatshair, a white hat and cotton cap; clothed presumably as he had been when he had set out from Arezzo.⁴⁴⁶

The execution took place during the Pontificate of Innocent XII, in 1698.



**Trial and Death of
Franceschini and his Companions,**

for the

Murder of Comparini, his Wife, and Daughter,

Which happened during the time of Innocent XII.

NOTE.

The following additional account of the Franceschini murder case was discovered a few years ago in the Royal Casanatense Library, Rome (Misc. Ms. 2,037), in a volume entitled *Varii successi curiosi e degni di esser considerate*, containing thirteen pamphlets by various authors, most of them concerning famous criminal trials, the majority of them from Rome of the 17th century. The volume is in a hand of the early 18th century, and contains an indorsement to the effect that a copy was made from it in 1746. The Franceschini murder is the subject of the tenth narrative of the volume. Internal evidences indicate that it was written somewhat later than the secondary source pamphlet, by one who has considerable knowledge of the crime. It presents a better story and a fuller account of the motives of the actors, especially those of Abate Paolo and Violante, together with a number of additional matters of fact not contained in the Book. It never fell in Browning's way and hence has no immediate source-relation to the poem, but it does prove in some cases the accuracy of Browning's conjectures of unknown facts when definite data failed him.

The pamphlet was printed in translation by W. Hall Griffin in the *Monthly Review*, November, 1900. The present version has been made by the editor from a transcript of the original Italian executed by a friend in Rome.—C. W. H.

TRIAL AND DEATH OF FRANCESCHINI AND
HIS COMPANIONS,

FOR THE

MURDER OF COMPARINI, HIS WIFE,
AND DAUGHTER,

WHICH HAPPENED DURING THE TIME OF INNOCENT XII.

The Abate Franceschini,⁵⁰ born in Arezzo, Tuscany, of a family which was noble but poor of estate, having the cleverness to advance his own fortunes, proceeded to the city of Rome and was admitted by Cardinal Lauria into his household as Secretary of the Embassy. His inherent mental aptness won for him the favor of the Cardinal, who was held in great esteem in the Sacred College by reason of his learning, and who stood so high that he might well have aspired to the Papal Chair. In this lucky juncture, Abate Paolo, wishing to take advantage of his good fortune, thought to provide a wife for his brother Guido and to recoup his family fortunes by a rich dowry. Guido had served Cardinal Nerli⁵⁹ in the same capacity, as Secretary of the Embassy; but either because he had not the good luck or the ability of his brother he left that service. Although Paolo knew that the idle state of his brother would be hurtful to his claims of dowry, he did not cease aspiring to a very advantageous one, flattering himself that his own distinction might make up for the shortcomings of his brother.

Now Guido had reached full maturity, was of weak temperament, ordinary in appearance,⁴⁵ of a disposition more gloomy than pleasant, and moreover was of scant means. Hence, unless Abate Paolo should use his own influence, he could have little expectation for Guido. After having attempted several alliances of high rank, Paolo fixed his thought on Francesca Pompilia, the daughter of Pietro and Violante Comparini. As she was their only child, and as her parents were too far advanced in years to have other offspring, she would fall heir to a reversionary interest of 12,000 scudi;⁶⁷ and he hoped that he could easily make the match, as the Comparini were rather inferior to him in birth.

A certain hairdresser⁷⁰ frequented the home of the Comparini with the familiarity admitted by those women who desire to make themselves appear more beautiful to their husbands' eyes than they are and which some husbands tolerate who rely too much upon the fidelity of their wives. Paolo considered this woman to be the best means for aiding his designs for the marriage of Guido, and the latter often went to her shop with the purpose of winning her confidence by odd jobs. When he had often turned the talk to the subject of

taking a wife, she told him one day he might readily apply for the daughter of the Comparini, for she had a suitable dowry, besides being heiress to a reversionary interest, and was of a small family connection, which were his very requirements. When through her efforts he had succeeded in achieving the marriage, it was understood he should reward her with 200 scudi. The hairdresser lost no time in broaching the matter to Violante,⁷⁹ who, anxious for the advancement of her daughter and for the establishment of her own interests, agreed to speak of it to her husband and, if the matter were as stated, to persuade him to effect it. Violante spoke to her husband⁸¹ about it and he did not reject the proposal provided that the vaunted riches of the Franceschini were verified, but he said this would have to be given in a written statement attested by well-known and reliable persons. When the hairdresser had carried back this word to the Franceschini, they sent a statement⁸² of their real estate in Arezzo, with an income amounting to 1,700 scudi, attested by persons well known to the Comparini and who confirmed it to them orally.

Abate Paolo, fearing lest this fortune might escape him, gave them no time to change their minds, and in order to make the matter surer he desired to secure it by the hand of Cardinal Lauria,⁸³ his patron, by whom he had the marriage agreement drawn up; for his Eminence was pleased to show kindness to the advantage of a man whom he regarded with some favor. Meanwhile Comparini had become better informed of the rank and property of the Franceschini and found them far different⁸³ from the preceding account, both in rank and in property. Therefore he had a warm dispute with his wife, who persisted in the marriage and declared that he had been advised by persons envious of the good fortune of one or the other house, and who wished to hinder it, and that she was not shaken in her original desire; for she was very sure, from other truthful witnesses, that the Franceschini were of the first rank of nobility of Arezzo, and not of the second,⁸⁴ as those had said, and that the property given in the list had been untampered with. But the more she warmed to the matter, the cooler became Pietro; for being very diplomatic, if he could not gain, at least he wished not to lose by the marriage of his daughter. But what does not a man lose when he allows his wife to rule him? He loved her so tenderly that from the first day of their marriage he had constituted her the arbitress of his wishes. Violante, nevertheless, fearing lest Pietro, in a case of such importance, might be more influenced by reason than by flattery, could suffer no delay in making secure the reversionary interest which another house could claim if the Comparini were without an heir;⁸⁵ she therefore resolved to have the marriage performed without the knowledge of Pietro. When she had secured the consent of the daughter, who was always obedient to her commands, and had made an appointment with Guido, she conducted her, suitably clothed, one morning to San Lorenzo in Lucina, and espoused the two.⁸⁵

Pietro felt the blow keenly, but being unable to find any remedy for it, he cloaked his anger⁸⁷ with the show of being displeased at not having been present, and this displeasure would cease in him with the joy of the nuptial feast, which should be in their house. He assigned to his daughter as dowry twenty-six bonds,⁹¹ with future succession to the remainder.⁹² On the very same day, after talking of the advantages which would result to both houses from the union of their interests, they decided upon the removal of the Comparini to Arezzo,⁹⁴ which followed in a few days, and with it the absolute administration of the property by Guido.⁹⁰

When they had reached Arezzo the Comparini were received by the mother and relatives of Franceschini with all that show of love which is customary

on such occasions. But very soon, from constant association, disturbances arose,⁹⁵ and thence they passed to hostilities. The mother of Guido, a proud, avaricious woman,⁴⁶ who governed the household despotically, took to stinting it even in the necessary food. This moved the Comparini to complaints, to which the Franceschini first responded with insults and then with threats. This was a thing Violante could not tolerate, for, being a woman, she had her own share of natural arrogance.⁶⁴ So she began tormenting Pietro, cursing the day when he had decided to move to *Arezzo*, laying the blame on him for all that of which she had been the cause. And Pietro, who was one of those men who let themselves be overcome by a couple of crocodile tears of their wives, instead of reproving her for the undertaking (although she had concluded the marriage against his wish and without his knowledge), entreated her affectionately to bear with patience the abuses, which would possibly cease when the Franceschini saw them defended by their daughter.

At that time [November 30, 1693] passed from this life to Heaven Cardinal Lauria, a churchman of merit beyond all praise. Then Abate Paolo⁵⁰ was elected Secretary in Rome of the Religious Order of Malta. At this the haughtiness of the Franceschini increased so much that they considered it grand good fortune for the Comparini to be considered their friends, not to say their relatives. Violante being no longer able to live under the proud command of another woman, since she had been in the habit of domineering,⁶⁴ as her husband had been subject to her wishes, so tormented him that she induced him to take up his residence in Rome again. For this purpose the Franceschini gave them a sum of money⁹⁹ sufficient for the journey and for the most necessary furniture in the home.

Scarcely had they reached Rome when, to the surprise of everybody, it was reported that Pietro had dispatched a judicial warning, in which he set forth that Francesca Pompilia was not really his own daughter¹⁰⁸ and that therefore he was not obliged to pay the dowry.²⁶⁰ He brought the attestation of Violante his wife, who had declared that to check her husband's creditors¹⁰⁷ in the matter of the trust fund and to enjoy the income of the bonds, she had feigned to be pregnant¹⁰⁵ and, that her husband might not discover the trick, she agreed with him that when she became pregnant they should abstain from association until after the birth of their child. And so, on the very day of this pretense, they took separate bedrooms; still further, by well-arranged clothes, she feigned the swelling of the womb, and by suitable drugs made pretense of nausea until her time was come. She then took advantage of a day when Pietro was occupied in his lawsuits, to bring forth the pretended birth, which was well carried out by the sagacity of a midwife in the secret, who provided whatever was necessary. And that the house servant might not detect the trick, they sent him to the apothecary to secure certain medicines. At the same time the midwife went to get a little creature whom she had received the day before from a neighbor, who was already in the secret. When she had returned to the house she summoned a familiar friend of the Comparini from a window. Matters were so well arranged that when the woman arrived, there was nothing more to do than to make her believe what was not really so. And to trick more surely the thought of this neighbor, they feigned that when Violante wished to pass from the bed to a chair, she fainted into the arms of the woman by reason of her pains, since the midwife could not run up in time.

This unexpected act of Pietro, which became known in Rome immediately, was heard with less wonder than scorn. The just anger of the Franceschini would have undertaken due vengeance if it had not been mitigated by the hope

that, since Pompilia was not the true and legitimate daughter of Pietro and Violante, the marriage would be annulled²⁹⁷ and Guido's wounded reputation would be healed. But when he had taken counsel with several authorities and found they were of different opinions, he was unwilling to risk so doubtful an affair, in the promotion of which they would necessarily confess and presuppose that she was not the daughter of the Comparini, and by this confession they would be prejudiced in their claims to the dowry. They opposed the judicial notice and obtained for Pompilia the continuance of her quasi-relation as daughter²⁶³ together with a decree for the transfer of the dowry bonds. But Pietro appealed²⁶⁴ to the Signature of Justice so trickily that the Franceschini had the expense of the transfer, but not the enjoyment of the income, since they obtained from it not even a two months payment.

The unfortunate Pompilia was the victim of the hatred of these two houses; for she was left alone in Arezzo at the will of her husband, her mother-in-law, and her relatives, who were mortally offended at her parents, and she was hourly threatened with death. In so deplorable a state the courage even of a more mature woman would have failed, not to speak of that of a girl only sixteen years old. For she was innocent of the wiles of her mother and of the duplicity of her father and by her own good qualities she was worthy of tenderness rather than cruelty. The unhappy one suffered as best she could these tyrannies which were ever increasing, but despairing of all hope of peace, she often had recourse to the Governor of the City,¹³⁵ that he might interpose his authority with the Franceschini. As this was of no avail, she threw herself at the feet of the Bishop,¹⁸⁹ who had Guido come into his presence and who tried to reconcile him. But Guido's anger increased all the more because of this public recourse, and he threatened Pompilia with certain death if she should ever try it again.

When the poor child saw every way to peace closed against her she appealed to Canon Conti,^{35 145} a relative of the Franceschini, who was very well informed of her wretchedness because he visited the house, and she begged him to save her life, which was in continual peril. He was moved to pity, for he knew that she had no other remedy than flight. As he could not personally assist in this, lest he would have to bear the hatred of the entire family connection, he suggested to her that the very person for such an enterprise was the Canon Caponsacchi,²⁶ his intimate friend and somewhat related to him by blood, whose courage was no less ready to meet danger than to overcome it.

Pompilia accepted the counsel of Conti, who lost no time in opening the affair with Caponsacchi. He at first showed some unwillingness,¹⁷⁹ as he hesitated to carry away a wife from her husband, even with the sole purpose of conducting her to her own parents. But when he had been fully informed of the insufferable abuses of Guido and his relatives his pity prevailed over all other considerations and he accepted the undertaking. Pompilia, who was eager for this, tried to win him by letters and amorous verses,^{232 247} yet always keeping herself true to her marriage vows, as one may read in her letters. In some of these she praises the modesty of Caponsacchi, in others she reproves him for having sent some octaves which were slightly reprehensible, and she urged him to keep unstained that nobility of which he boasted. On the day appointed for flight, with the assistance of Canon Conti, the two took their places in a carriage and traveled as fast as they could,¹⁹⁴ without resting save when it was necessary to change horses. They arrived the second morning at dawn²¹¹ at Castelnuovo,²¹⁰ and, in spite of the fact that the host had assigned them a bed for repose,²¹⁵ Pompilia seated herself in a chair and Caponsacchi went down to the stable to urge on the driver.

When Guido awoke after the flight of Pompilia and perceived that she was not in bed, he arose in a fury and, seeing the jewel-box open¹⁹⁸ and minus the jewels and money,²⁰⁰ which it had contained, he surmised what had happened to him. Accordingly on a good horse he sped along the Roman road and overtook the fugitives at the abovesaid inn of Castelnuovo an hour after their arrival. When Pompilia saw him, with that courage which desperation may arouse even in the weakest spirits, she seized Caponsacchi's sword which lay upon the table, unsheathed it, and thrust at his life,²²⁷ calling him betrayer and tyrant. Guido, fearing lest her spirit no less than the valor of Caponsacchi might bring his death rather than revenge, turned his horse and rushed to the authorities.²²² He had the fugitives arrested and conveyed to the New Prisons,²⁵⁵ where he entered charge of flight and adultery against them.

The Abate Paolo who, as has been said, was the Secretary of the Religious Order of Malta in Rome, made noisy recourse for his honor to the Pope,²⁶⁰ and he put a petition before Monsignor Pallavicino, the Governor, demanding that he declare Caponsacchi the seducer of his sister-in-law, and both of them guilty of adultery, and that his brother for that reason was entitled to gain the entire dowry. Legal proceedings²⁶⁹ were instituted against them according to the most rigorous forms of law, but no proof of guilt was found against Caponsacchi²⁷² and Pompilia except the love letters²⁵² written at the time of the arranging of the flight, the undertaking of the flight itself, and the deposition of the driver.²⁰⁶ For the latter declared that he had sometimes seen, when he had turned back during the journey, that they were joined face to face, that is cheek to cheek, a matter which did not make full proof of fault, since the rough roads and the headlong speed of the journey jostling them about²⁰⁹ might have been the cause of it. Wherefore the Court deemed it prudent and just to sentence Caponsacchi to three years relegation in Civita Vecchia for his rashness²⁷² in running away with a wife from her husband, even though the motive was pity. While the case of the Franceschini against Pompilia was on trial, Pompilia was transported with their consent, as their prisoner, into the Monastery of the Scalette²⁷⁶ on the Lungara,²⁷⁸ with the obligation that Guido, her husband, should provide her food.²⁸² There, after a little while, it was discovered that she was pregnant and as it no longer comported with the reverence of that place that she should remain there,²⁸³ with the consent²⁸⁸ of Abate Paolo, who had power of attorney for his brother, Monsignor the Governor ordered that she should pass into the home²⁸⁴ of the Comparini, her parents, under security of 300 scudi to keep it as a secure prison; and he declared that Guido's obligation for her food should cease²⁸⁷ the very day she left the monastery.

This cause, in which the Franceschini were not obliged to have hand for mere honor's sake, was seen to have its chief motive in selfishness. Therefore there was not a company where the conduct of one or the other party was not censured. For this reason the Religious Order of Malta gave secret intimation to Abate Paolo that he should resign his office. At the loss of this honorable post, rein was given to the evil tongues of his adversaries. This put Abate Paolo in such straits that, ashamed to meet his dearest friends, he decided to leave Rome³⁰⁴ and to pass to a clime where information of the dishonor that so afflicted him would never come.

When Guido was informed of the departure of his brother and of the obligation resting on him of repairing the honor of his house, he thought³⁰⁶ that to go into voluntary exile, as his brother had done, would only prove the baseness of his own mind. For he had been justly charged with this since at the time he had overtaken his wife with her abductor he had failed in that very place to take the vengeance²²² which was demanded at his hands.

In due time Pompilia had given birth to a son²⁹⁹ who was sent out of the house by the Comparini to nurse.³⁰⁰ Thereupon everyone believed, and especially Violante, that the ties of blood would move Guido to a reconciliation with his wife. For in spite of their declaration that Pompilia was not their daughter, the minds of the Comparini might still be disposed to some reconciliation. But Guido's thought was quite different, for he was continually stirred, even in the absence of Abate Paolo, to plot the removal from this world of the entire memory of his dishonor by the death of Pompilia, Pietro, and Violante, and possibly of still others.

Guido had in his employ, in the country,³¹⁰ a daring and wicked laborer³¹¹ [Alessandro Baldeschi] to whom he often exaggerated the shame which his wife and the Comparini had brought upon his house. To him Guido revealed that with his assistance he wished to purge with their blood the stain to his honor. The cutthroat straightway accepted and declared that, if there were need of other company, he had three or four friends for whom he would vouch. Guido replied that he should take three bold and trusty ones to make sure against any possible resistance and should use all care to secure them at the lowest possible price.

When all had been agreed upon,³¹⁶ and arms suitable for the affair had been prepared,³¹³ Guido, with his four companions in disguise, secretly took the road to Rome. Reaching the home of the Comparini at eight o'clock³²⁰ in the evening, one of them knocked at the door, and when Pietro responded the murderer told him that he had a letter to give him which had been sent from Civita Vecchia by Caponsacchi. When the women heard this they told Pietro to have him come back again next morning, urging him not to open the door. But he was curious about the news from Caponsacchi and when the murderer replied that he could not come back in the morning, as he was obliged to leave that night, he opened the fatal door and thereby admitted his own death and that of Violante and Pompilia.

Guido in a transport of rage leaped in with two companions, leaving the others on guard. They first dealt the poor old man many blows and deprived him of life before he could lift his voice.³²⁴ Scarcely had the unfortunate women seen this when, transfixed with like wounds, they suffered the same fate. Upon the unfortunate Pompilia fell the blows of her husband,³²⁶ accompanied with countless insults, and after he had trampled her several times under foot and wounded her anew, not trusting his own fury, he told his companions to see if she were really dead. One of them lifted her by the hair³²⁷ and let her fall again, and assured Guido that she was no longer alive.

When this barbarous murder had been concluded and the money agreed upon had been paid to the cutthroats, Guido wished to leave them, but they would not allow him to desert them for fear that one might kill another, as frequently happens for hiding such misdeeds. Or else the murderers, while united with their leader, had agreed to kill Guido³³⁹ as they thought he might have a large sum of money. Hence they did not consent to his leaving them and they took the road toward Arezzo together, which they agreed to make on foot,³³⁹ as they could not secure posthorses.

From these repeated wounds Pietro and Violante were quite dead, but not Pompilia, though her wounds were more numerous. For because of her innocence she was especially helped by the divine mercy³⁴⁸ and she knew so well how to feign death³²⁹ that she deceived the murderers. When she saw that they were gone, with her dying breath she mustered sufficient strength of voice to make the neighbors hear her cries for help.³³¹

They found her in the last extremities and eagerly ministered first to her soul and then to her body. Her wounds were so numerous and of such a nature

that although they did not immediately kill her, they made her death certain. This occurred a few days later, to the sorrow of all those who assisted her and who had knowledge of this pitiable case. The fortitude with which she suffered the pains of her treatment caused as much wonder as her resignation to the Divine Will caused love. She not only did not blame the cruelty of her husband, but with fervent prayer she besought God to pardon him.³⁵⁹ The compassion of her assistants both for her soul and for her body, I attest by the following sworn statement concerning not only her innocence, but the happy passage of her pure soul to heaven.

[Then follow the affidavits of Fra Celestino and others given on pages lvii-lx.]

Divine justice, which would not suffer so atrocious a deed to go unpunished, caused the criminals to be overtaken by the authorities at the break of dawn³⁴⁰ at an inn a few miles from Rome. For when they had eaten a little, they went to sleep by the fire,³⁴¹ fatigued by the journey and overcome with drowsiness. The police rushed violently in upon them and, pointing carbines at their breasts, assailed and bound them at once. They were straightway taken to the New Prisons³⁴⁵ and the Governor apprised the Pope⁶² of this barbarous murder and of the arrest of the guilty. He gave commands that, without delay and with all rigor, trial should be brought, this being a case which, by reason of the consequences which might arise from it, should be examined into with very special attention.

Far less torment⁵²⁶ than would seem to be necessary had to be applied to get the confession of the murderers and of Guido, who more than the rest had stood by his denial. But at the sight of torment he had not the heart to resist longer and confessed fully, saying indeed that the crime had had no other motive than the reparation of his honor which had been so publicly offended. This was a matter which any common man would have undertaken, not to speak of himself, who was a gentleman; and if on his first examination he denied the truth of this, he had done so lest he might injure his companions, who had aided him in a deed worthy of all sympathy, because he had honor as his sole end.

With the confession of Guido and its ratification by the rest, the process was finished, and they were sentenced,⁴²⁷ the cutthroats to the gallows and Guido to mannaia, a means of death conceded rather out of respect for his being in clerical orders than for any other reason. The Advocate and Procurator of the Poor had written so ably in their defense on the point of honor that there is no memory of more learned arguments. But the features of the crime were so many (and all of them punishable with death) that they were overcome no less by their nature than by their number. Among such features was the bearing of arms⁴¹³ prohibited under capital penalty, the death of Pietro and Violante⁴⁰¹ who were not accomplices in the flight of Pompilia, the murder while a law-suit was pending,⁴²¹ and in their own home,⁴¹⁷ which place the authorities had with the consent of Guido assigned to Pompilia as a secure prison.⁴¹⁹ The many other weighty charges which displayed the great learning of the defenders were the just cause of the death of the accused. Yet with the usual hope of all those who make confession of capital crime, Guido flattered himself that he could save his life by reason of his honor. At the unexpected announcement he did not give up to such a frenzy as frequently follows in those who experience so terrible a disaster, but, as if stupefied, after a few minutes he heaved a deep sigh, accompanied by a few tears, which by their extraordinary size showed dying symptoms. He said: "I well feared a heavy sentence, but not that of death. My crime is great, but love of honor has never suffered me to perceive what it was until now that sentence has

been passed, which I hold in such reverence that I wish to appeal only to God, to whom alone I turn for the only mercy. Without His will I should never have reached this awful pass, which may be a comfort to me and not a source of bitterness, that I may gain by entire resignation to His will the merit of His pardon." And then he⁴³⁸ threw himself into the arms of the compassionate Frati and showed such signs of true contrition that their prayers were accompanied by tears rather than by exhortations.

His four accomplices did not submit themselves with the same readiness,⁴³⁷ for as they were of lower birth so were they less swayed by reason, which would render them impressible to the punishment they had merited. The oldest [Baldeschi] and youngest [Agostinelli] were the most obstinate, the one from having a heart hardened by so many years of evil life, and the other being all too sensitive to so harsh a punishment for a single crime, in the very flower of his youth, without ever having spilled a drop of blood, and with the sole fault of having been induced to stand as guard at a door through which Guido had had to pass, to purge himself of the stains to his honor by the blood of his foes. As the hour of execution drew nearer, the stubbornness of these wretches so increased that the Frati despaired of their repentance. At last the Divine Mercy, which works miracles when we least expect it, entered their hearts and gloriously demonstrated His omnipotence. They finally trusted in God, and the memory of those faults which had made them obstinate, and which were now illuminated by the Divine Grace that disposed them to penitence, fitted them for pardon. When these souls had been secured for God after such a hard contest, the execution passed from the New Prisons at Tor di Nonna to the scaffold raised in the Piazza del Popolo in view of the gate and of the Corso. In the midst was the block on a lofty scaffold,⁴⁴¹ larger than usual and with steps made with particular care; on the two sides the gallows were placed at equal distances. In spite of the vastness of the Piazza, not a single foot was left which had not been occupied by stands,⁴⁴³ which were covered with tapestry and other ornaments forming a theater for festal celebrations rather than for a solemn tragedy.

His four companions preceded Guido, each of them in a separate cart,⁴³⁸ assisted by the devotion of the accustomed Frati [The Brotherhood of Death] and followed by a countless concourse of people praying for a blessed departure, which in view of their contrite resignation seemed not at all doubtful and even a certain hope. Rarely did Guido Franceschini turn his eyes from the crucifix,⁴³⁹ except when nature, overwheeled by the steadfastness of his gaze, made him turn away his head but not his heart, which had been wholly given to his Creator so that none was left for himself.

When he had reached the Piazza di Pasquino, and the cart had stopped before the church of Agonizzanti, where on days of public execution it is customary to offer the Sacrament to the delinquents condemned to death and therewith to bless them, Guido knelt and began to recite, in a voice quite audible to bystanders, certain verses of the *Miserere*,⁴⁴⁵ and among them this, "Hide thy face from my sins and blot out all mine iniquities." He accompanied this with such signs of sorrow and penitence that the people by their tears showed no less grief than the one condemned.

With equal devotion his companions received the same blessing, but the behavior of the youngest [Agostinelli] was remarkable beyond belief, who beside himself with his love of Heaven and of God, by his expressions which exceeded his own capacity, confounded the wisdom of his pious assistants.

Thence by the most densely populated streets⁴⁴⁰ they continued the journey to the Piazza del Popolo, where they all died, Guido last, with those acts of

contrition which their preparation had shown. As the youngest had displayed most blessed signs during life, so it pleased God that he met his death likewise, for at the moment the executioner did his work, he clasped between his breast and his hands the image of that crucifix whereby they had become certain of Divine Pardon. This assured the people of his salvation as his untimely death had aroused their pity.

Rome has never seen an execution with a greater concourse of people, nor does it remember a case on which there was such general talk as on this. Some defended the Comparini, because they had suffered abuse, others the Franceschini as it was a matter of honor. But, on looking at the matter dispassionately, they were adjudged to be equally guilty, except that Pompilia, who was entirely ignorant of the truth, was without blame; for she had consented to the marriage at the command of her mother without the knowledge of her father, and had fled from her husband for fear of death with which he had often unjustly threatened her.

From trickery arose the union of these two houses, from the Franceschini in frauds regarding property they did not possess, from the Comparini by the pretended birth, or by this very pretense if the birth were real. The trick arose from greed of gain in Pietro to secure the trust moneys for himself, and in the Franceschini to minister to their own ease; so all was done contrary to laws both human and divine. Hence a bad beginning was followed with a wretched ending, as has been told above.



The Making of a Great Poem.

An Essay

On the Relationships of The Ring and the Book
to the Old Yellow Book.

Lovers of dead truth, did ye fare the worse?
Lovers of live truth, found ye false my tale?



THE MAKING OF A GREAT POEM.

"So absolutely good is truth."

I. The Mystery of Poetic Creation:

The philosophy of art concerns itself with some of the most profound truths of humanity, and the creative act and creative artist alike have always fixed the attention of the thoughtful. In olden days, the divine afflatus endowed the *vates* with a sacredness which all men revered. Bards wandered safely amidst even the more barbarous conditions of medieval life. Artists have continually invoked divine assistance, whether of the Muses or of the heavenly Urania. The scientific spirit of our latter day may not regard with religious devotion this divine mystery of creative art, but it is still probing with no less interest the meaning and power of the creative activity of the human spirit. This diverted regard has shown itself largely in the increased study of biography and of source-materials, which have been sought and sought again for an explanation of the mystic power we call genius. The biographical study of artists, which has increased so greatly in recent years, has been no mere idle curiosity concerning personal gossip; and the reader has turned in disappointment from many a biography, from which the personality of the artist—the one all-important x of the problem—has utterly escaped. The biographer's attempt to trace power to the facts of heredity, education, and environment seems to fall far short of this purpose. And so the mystery of creative genius gets but a half answer in biography.

Latter-day critics have also turned in their research to possible revelations from source-studies. How far does the artist's raw material control or master his creative activity? What is the difference between the material and the final product? What personal activity of the artist effected this change? We soon find that art is far more than matter of fact. It is personalized, subtletized fact—fact raised to a higher coefficient by the intense play of genius upon it; it is fact athrob with the deeper truth of life, which is part of the endowment of the great artist. Some alchemizing power, which is a function of the artist's personality, has wrought the change. And this power is little less mysterious now than when in olden days it was called inspiration. The play and the illumination of this power differ indeed with the individual artist, and the general problem of its place in art assumes new aspects with each

genius studied. Nineteenth century criticism has already examined, so far as lay in its power, the artist's work upon his originals. Beginning with Shakespeare's source-books, it has followed on to those of Chaucer, Goethe, Milton, Tennyson, and others. Each of these studies has served to emphasize the import in art of the inalienable personal force of the man of genius. He has succeeded in no mere lucky find of what would have made another man great. We are told that the story of *Evangeline* was given originally to both Longfellow and Hawthorne, and that for a while there was a question as to which should use it. But we can not doubt that what has fixed the world's attention on *Evangeline* would have been lacking if even Hawthorne had undertaken his version of the story. Now source-study can in no sense fathom or explain away the element of personal power in creation, but it can at least differentiate the peculiar master-power of each artist; it can make clearer the Miltonic, the Shakespearian, the Chaucerian touch. For in art, as in life, we find important data for estimating the man in considering the material upon which he reacts and in which he takes a peculiar interest. Many a secret of personality opens at the sesame of a master passion or of a dominating interest, and slowly from the contemplation of these various artists at work we may evolve a philosophy of creative art.

With a view toward a fuller solution of this master problem, and toward a clear comprehension of the peculiar genius of Robert Browning, the present source-study of his chief poem has been undertaken. For Browning is one of the most original and vital of our English poets, and the play of his personality in its creative moments can not fail to interest the student of art and the student of the human soul. In this comparison we may trace the creative reaction of Browning through a period of four years upon a mass of chaotic, unpromising material. Browning's habits as an artist come gradually into clearness as we follow this study to its ultimate outcome. We see his reverence for truth, his intense human sympathy, his grotesquerie, his realism, his insight into motive, and his easy mastery of countless details. While his intellect grasped every fact of this history, his insight and imagination had free sway; and he felt no check to his power in his abiding conscientiousness in the use of fact. Still further, this study does much to explain the creation of the unique genre which Browning has developed from his practice of monologue writing for *The Ring and the Book* as his crowning work.

II. *The Ring and the Book as the Macrocosm of Browning:*

In the wide range of the work of Robert Browning no single poem can rival *The Ring and the Book* in scope and manifold power. The subject had fallen to his hands at the very fullness of his maturity by

“predestination,” as it seemed to him. In the poem, as he planned his treatment, there was opportunity for every phase of his peculiar genius, so that the completed masterpiece became the macrocosm of his work. Fortunate indeed is the artist who at the climax of his career meets the subject that will exact all and express all of himself. Browning’s whole artistic life had been tending toward some such large expression of itself, and the poet did not hesitate to invest lavishly of his creative energy, confident of the final power of this work. In his early manhood he had written long poems—the biographies of his aspiring heroes; but they had been intense and narrow, eloquent but chaotic. Moreover, Browning the humorist and realist is utterly lacking in *Paracelsus*, *Sordello*, *Strafford*, and we may almost add the dramas. Then follows a quarter of a century devoted to shorter subjects, from many phases of life, but none of these singly can “all-express him.” They display widely varied powers. His humor laughs through Lippi, his romanticism follows the flight of the Duchess, his satire pierces Johannes Agricola, his philosophy falls from the lips of Rabbi Ben Ezra, his analytic keenness in character pierces the episcopal robes of Blougram, his grotesquerie runs riot in Caliban, his hero-worship exalts Luria, and his personal devotion utters itself in *One Word More* and *By the Fireside*. These poems, gathered chiefly in *Men and Women*, 1855, and *Dramatis Personae*, 1864, had firmly established the Poet’s reputation, so that he stood at least a sure second to the famous Laureate. None of them represent long-protracted thought and labor.

At this juncture the story of Pompilia and Caponsacchi and Guido fell in his way. He might have made of it a dramatic romance of a few hundred lines. He preferred to give it an importance in his art far beyond anything he had ever essayed. This had not been the cherished purpose of a lifetime, as were the *Paradise Lost*, the *Divina Commedia*, the *Faust*, or the *Idylls of the King*. But Browning almost instantly realized the fitness of the subject for his *magnum opus*—though it had none of the prestige of the century-laden legends which fascinated these other poets. Hence he treated it in no cursory way, but continued working on it till the poem had reached epic dimensions, till he had devoted to it four of his ripest years, and till it had deployed every energy of his nature. He has nowhere displayed more telling irony, in which he is so eminent, than in Bottini; more profound philosophy than in the Pope; more tender understanding of woman than in Pompilia; nor sadder nor wiser insight into the depths of sin than in Guido; nor a finer conception of true heroism than in Caponsacchi. The poem ranges through many emotional keys. It contains long passages little removed from prose, save in form, but it rises to heights of impassioned poetry seldom attained by Browning. It is therefore what the long poem should be—expressive of the whole nature, the whole art, the whole

view of life of the Poet. That he himself saw here his greatest subject * is evidenced, apart from this excessive expenditure of time and skill upon it, by the motto from Pindar which he inserted in the "old yellow book":

Her strongest-winged dart my Muse hath yet in store.⁵³⁸

He would, therefore, summon every power to his new theme and spend more of himself on it than on any other subject with which he had ever grappled. And yet, though written broadly and deeply, it was simplified in method and in style until it was fairly directed to the average intelligence of thoughtful readers. It can in no sense be regarded as a critics' bone of contention, but is one of the most lucid of all of the Poet's works. Hence it is no matter of surprise that the better critical appreciations of Browning which have appeared of late years, such as those of Brooke, Dowden, Chesterton, and Herford, have given the poem a place of greatest importance. It stands eminent, we do not hesitate to say preëminent, among the longer English poems of the nineteenth century.

III. *The Poet and the Source-study of his Poem:*

With a self-consciousness of his artistic functioning, not unusual in Browning, the Poet insistently calls attention to the source of his long poem. The very title includes the Book; and *The Ring and the Book* is symbolic of the artist's use of his raw material for the purpose of his art. In the introductory book of the Poem, the Poet describes the finding and the nature of the Book with such particularity that the reader naturally queries,

is there book at all,
And don't you deal in poetry, make-believe,
And the white lies it sounds like?

The sham book of memoirs or the book of letters is such a commonplace in fiction that its mere mention excites the incredulous smile. De Foe was a past-master in this art of sham originals, and Hawthorne has made this device a door of entry into his *Scarlet Letter*.

But Browning had long given his readers the impression of a somewhat different art—of a thoughtful grappling with fact as he found it—of a straightforward truthfulness of art. "Truth-teller was our first great Alfred called, truth-lover he" might well have been said of Browning, as it was said of Tennyson. Yet no one has had at hand the material to prove his marked fidelity to the fact-basis of his imaginary superstructure in *The Ring and the Book*. The Book, indeed, is no fiction, but a veritable fact, shaping the Poet's whole story.

* "I know he thought *The Ring and the Book* was going to be his greatest work long before he had finished it. * * * he often told me while writing that it would be the longest poem in the English language. He was more and more interested in the work as it advanced."—Letter from Mr. R. B. Browning.

Nor is he satisfied to consider its contents as crude raw material. To him they are "pure gold"—"in this book lay absolutely truth"—

The untempered gold, the fact untempered with,
The mere ring-metal ere the ring be made!

And he continues,

From the book, yes; thence bit by bit I dug
The lingot truth, that memorable day,
Assayed and knew my piecemeal gain was gold.

His insistence on his figure of "the gold" shows how highly he valued the contents of this old volume. They were truth—truth that challenged him, truth that called forth all his mastership, truth that tested all his insight. And "truth" is a master word throughout the Poem, to which speaker after speaker returns with strong insistence. The philosophy of life's truth is one of the most important phases of the thought behind the story and the characters of this Poem.

Still further the Poet was intensely interested in the psychological process whereby this "gold" of truth was fashioned into the "ring" of art. No critic nor philosopher could show a closer interest in this play of poetic genius upon its material. He would pluck out the heart of this mystery—a mystery which fascinated him all the more because it had been his own familiar for half a lifetime. He who had taken apart the "wheels" of so many souls, now looked curiously into this subtlest power of his own mind. What was the process of this transmutation? Whence was its power? The material was not worthless in itself; but upon it the spiritual power of the artist had to work with life-giving mastery until he too became a creator and reached man's highest function.

No less, man, bounded, yearning to be free,
May so project his surplusage of soul
In search of body, so add self to self
By owning what lay ownerless before,—
So find, so fill full, so appropriate forms—
That, although nothing which had never life
Shall get life from him, be, not having been,
Yet, something dead may get to live again,
Something with too much life or not enough,
Which, either way imperfect, ended once:
An end whereat man's impulse intervenes,
Makes new beginning, starts the dead alive,
Completes the incomplete and saves the thing.

A third of a century before, in *Sordello*, line 1212, Browning had said—

they are fain invest
The lifeless thing with life from their own soul.

IV. *The Peculiar Features of the Present Source-study:*

There are, moreover, certain peculiar phases of interest in the source-study of *The Ring and the Book* as compared with that of most other important poems.

Almost all the important extensive poems have had a long ancestry either in oral or written literature. Our primeval epics grew up through cycles of ballads. Many a literary ancestry is traceable back through centuries of varying forms, until the origin is lost in the mists of the prehistoric. Lowell has put this fact in his own way when he says "All the good stories came out of the ark." The Arthurian legend, which Tennyson used as basis of his own longest poem, is typical of such stories, and of the making of books on or from it there is no end. *The Earthly Paradise*, which was written and published in the same years as *The Ring and the Book*, is a patent retelling of world-old stories. But, unlike all of these, the pedigree of *The Ring and the Book* is democratically short. The story had arisen abruptly from real life—

Secreted from man's life when hearts beat hard,
And brains, high-blooded, ticked two centuries since.

It stirred the excitement of its own brief day, and would now demand the heaviest headlines of our sensational journals. The facts were thrown at once into the professional statements of the criminal courts, but then died away. The story never engaged an artist's attention, nor had it been tested by popular appreciation in the century and a half which elapsed before it fell into Browning's hands. The material therefore had had no artistic breeding.

Browning in fact has written few poems on conventional and long-practiced subjects; he seldom turned to the well-bred story, and when he did so, as in *The Glove* or *Alceste*, it was for the purpose of presenting his own unique interpretation of it. He preferred to gather materials and subjects in out-of-the-way, unpromising nooks and corners. He was the sole important Victorian poet who did not draw upon the *Morte d'Arthur*; and the well-trodden paths of the rich mythology and history of the Greeks tempted him very little, especially when we consider that he was so intimately acquainted with all that was Greek. And those Greek themes he adopts, such as Pheidippides and Balaustion, have abandoned all adherence to classic tradition in form and spirit. To him, therefore, the fact that his story was a literary upstart would have had no deterring effect. It probably stimulated his interest.

Browning's source-material is also far more definitely limited and ascertainable than is usually the case with the sources of great works of art. The Arthurian legend is too complex and multiform for the critic to feel definitely sure of all his data in such study. Even in Shakespeare, where we have some well-ascertained source-book in novel, or

play, or poem, or history, we are seldom certain whether the poet has not had one or even several other versions of his story before him. He doubtless had his Plutarch in thought while writing *Julius Cæsar*, but we can not tell the countless sources from which he might have drawn certain of the facts and feelings of the story, for Julius Cæsar was a popular subject on the stage for many years before Shakespeare used it, and the theatrical tradition must have influenced the dramatist in many ways. But we have here in the Book not merely the definite source of the Poet's information, but we are sure it was practically the sole source of his information. The story was not told in variant versions elsewhere; it was not developed into countless ramifications by generations of writers. Even the variant versions of public history of a date equally remote would afford the artist far more opportunity for artistic choice. But here in the Book we can be sure that we have before us the entire basis of fact for the Poem as Browning has wrought it. His careful search for further fact was in vain. (Cf. RB., I, 423-41, XII, 779-84.) This gives an exactitude, a scientific accuracy to the present source-study seldom attainable elsewhere, and justifies the critic in an even more minute study of original and poem side by side, as significant of the methods of creative power.

With all its definiteness of limitation, however, this source-material offers within its limitation a confusing complexity—we might almost say a chaos. Motives and characters are subject to interpretation and counter interpretation. The very facts of the story are matters of dispute. At no point are the characters of Guido, Pompilia, and Caponsacchi seen to emerge in their fullness, and no consecutive story of the mere incidents is given. The truth of this tragedy is as utterly dismembered as were the limbs of Osiris, and the Isis artist must have ranged through the whole extent of the Book to gather the scattered fragments of truth. Such chaos demanded the most masterly of organizing and interpreting power in Browning, before order could come out of confusion, and the very spectacle of the Poet's constructive mastery, his executive orderliness in art, in building all these fragments back into a consistent whole through which again an organic unity may be felt, is almost unparalleled in source-study.

Browning might have made the problem lying in this confusion easier for himself, if he had assumed an arbitrary power over this new province which had fallen to his imagination. But he also felt that he was peculiarly circumstanced in his creative activity by the "truth" of the materials with which he was working. He frankly recognized the authenticity of these documents—they were no mere fictitious creations, which he might shape or reject or amplify as he pleased. Fidelity to his material became a matter of artistic conscience with him. Mr. Barrett Browning in his letter⁵³⁶ confirms the fact of this conscientious

and even painstaking accuracy. The Poet seems to have felt he must be true to the Book in all its details, and that the creative play of his imagination must be ruled by this truth-aspect of the Book. We need not here enter into the general problem as to whether the Poet was acting with highest artistic wisdom in so doing. But we wish to make clear the fact, and the results must either approve or condemn the artist. Consequently we find that Browning, in dealing with the facts of this case, has exercised far less freedom of fancy than did Shakespeare, even when dealing with public and ascertainable history. We well know, moreover, that whatever the poetic truth of the sources of the *Divina Commedia*, the *Aeneid*, and the *Nibelungen Lied*, their actual truth was unascertainable, and the artist was subject to no such rein to his imagination, but was essentially free in his artistry. Possibly this fact appealed to Browning's peculiar type of mind and led him to choose such a subject as *The Ring and the Book* rather than one where there might be less check upon him from the truth of his material. And so, unlike Dante and Milton, Goethe and Shakespeare, he is true not merely to the larger truth of his story, but even to its comparatively trivial details.

Browning's problem and method were not unlike those of the historian. He had a mass of scattered and even conflicting details of fact, with hints of motive and cause. These he must interpret, not to suit a preconceived theory, as did so many of the eighteenth century historians. This older type of history, which preferred the symmetric working out of events in conformity with a preconceived notion, even at the expense of facts, was in Browning's day giving way to a new type of history, wherein the author recognized that he must not distort facts, but must legitimately deduce his principles from his facts—not merely the chosen and convenient facts, but even the stubborn and irreconcilable facts. This change in history was probably occasioned by the growth of the scientific spirit of the century, especially of the strict inductive method of science and of its regard for the integrity of fact. Browning shared this spirit and used the new method of organizing facts which had just been inaugurated among the historians of his day. His artistic method is in part the historic method, but, of course, goes beyond the latter in his consciousness of the moral beauty and of the spiritual meaning of the tragedy, and in his purpose to make the story appeal primarily to the emotions rather than to the mere intellect.

The present source-study, moreover, displays an unusual exercise of the transmuting imagination in its mastery over the crudest and least artistic of materials. The Book is indeed crude, hard fact, which had never been subject to the plastic touch of the artist. The lawyers who wrote it had no other concern than to sophisticate the truth for their own ends. The human element, the spiritual significance, and even the

truth to deta
Book

↓
Dante's method
poetic truth

historian

—sample
not intel

rough

sensational interest in a barbarous story had not attracted their minds. They apparently destroyed all possibility of art-appeal in the story and were utterly remote from the artist's purpose of pleasing by grace and beauty and power of thought or expression. Poets rarely use such material as it comes roughly from life. The novelist does so repeatedly, and it is the usual practice of a Kipling or a Dickens. But the raw material of the latter is forever dissipated from even the closest research of the critic. We can not follow their processes in transmuting rough life to art. Yet the play of Browning's interpretative and creative imagination upon these crude materials may be studied in full here. Even the crudest of Shakespeare's originals scarcely demanded a more sweeping exercise of creative power and a more subtle, alchemizing touch.

Another unusual phase of this source-material is its minute and reiterated insistence on motive. Browning was always a searcher for hidden and disputable motive. It was this that fascinated him in his early study of Paracelsus. But the famous source-stories of other poets have put stress far more upon action than upon motive. What was done? What was the story that had met the world's eye? In the Book, however, the close and disputed reading of the purpose behind each single incident of the story well fitted this material to Browning's peculiar genius.

Finally, the Book is utterly lacking in an underlying moral truth—a dominant and formative motive. Such a motive is found in the source-books of practically all of Shakespeare's plays, in the Faust legend, in the conception of *Paradise Lost* and of the *Divina Commedia*. The race for ages had been not merely retelling such stories, but had been conforming them to the racial faith, the racial ethics, the racial conception of life and character. There is therefore at hand, all ready for the artist, a larger human truth, which gives majesty to his theme, and which he may adopt or amplify, according to his own vision, as Shakespeare did in the story of Lear. But nothing of the kind was present in the Book. To its collector it had merely illustrated the question as to "whether and when a husband may kill his adulterous wife."² Hence the larger truth of these characters found in the Book and of their relationship to one another, the real meaning of the tragedy, had to be supplied entirely by Browning.

V. *The Book, its History:*

We may now pass on to a more specific account of "the old yellow book." The Poet himself has with unusual vividness described its finding. By no mere chance, but pushed by "a Hand, always above my shoulder" (RB., I, 40), he had discovered it amidst the rubbish

of a market barrow in San Lorenzo Square. This was in June of 1860. That very day the old record fascinated his imagination. And yet, in spite of his immediate interest, he seems almost to have laid it aside for the next few years. A letter of September 16, 1862, speaks indeed of "my new poem that is about to be; and of which the whole is pretty well in my head—the Roman murder story, you know." Yet his purpose to use the material artistically must have been subject to some fluctuation. And he is even said to have turned over the Book to a friend and novelist, Miss Ogle, with the suggestion that she use it in her art. "But," as the Poet casually remarked to Professor Corson several years later, "when she said she made nothing out of it, I wrote *The Ring and the Book*."

Browning's temporary neglect of the theme was probably due in part to his restlessness and inability to set himself to consecutive work after the breaking up of old habits and of the Casa Guidi home after Mrs. Browning's death. During these years he seems to have devoted more thought to his son than to his poetry. But the Book must have been subjected to many a reading before the Poet made it his "four years intimate," from 1865 to 1868. After the publication of *The Ring and the Book*, the unique old volume was not infrequently shown to the Poet's friends and callers—not "tossed in the air, and caught again and twirled about by the crumpled vellum covers," but handled tenderly, almost reverently.* Late in life he promised it, along with other papers and manuscripts, to Balliol College, Oxford, of which he was an honorary fellow. Mr. Barrett Browning personally carried the volume to Balliol shortly after the poet's death,⁵⁸⁶ and there it was finally deposited. The Poet's portrait, from the brush of his son (see frontispiece), shows him in his robes as honorary fellow clasping the Book in his hand.

The Book is not at all a published volume, but is rather a lawyer's file of documents and pamphlets^{4 5} bearing on the Franceschini murder trial.

Fanciless fact, the documents indeed,
 Primary lawyer-pleadings for, against,
 The aforesaid Five; real summed-up circumstance
 Adduced in proof of these on either side,
 Put forth and printed, as the practice was,
 At Rome, in the Apostolic Chamber's type.

* Prof. Edward Dowden in a recent letter has said: "I remember an afternoon when Browning put the 'old yellow book' in my hands. He must have felt for it a certain awe as the power that controlled his thought and feeling for so long a time." Dr. Furnivall, on the other hand, writes: "My impression is that when Browning showed me the old yellow book he tost it up in the air." Mr. John W. Chadwick says: "Mr. Browning did not seem at all inclined to toss it in the air and catch it as he does in verse. He handled it very carefully and with evident affection."

Browning suggests that its collector was the Francesco Cencini,¹²

advocate as well,
Socius and brother-in-the-devil to match,—
A friend of the Franceschini, anyhow.

This seems probable in view of the inclusion of the three personal letters to Cencini (pp. ccxxxv-xl); and Ugolinucci's letter (p. ccxxxix) speaks of the fact that he had sent on to Cencini the documents, that his friend might have full knowledge of the case.¹³ The manuscript title-page (p. i) seems still further to prove that the collector had merely a professional interest in the material; it was for him a noteworthy precedent as to "whether and when a husband may kill his adulterous wife without incurring the ordinary penalty" for murder.² The human or ethical side of the tragedy made no appeal to Cencini. The file when completed was part of his law library and not of his personal history. Cencini evidently bound all of this material with a vellum cover to preserve it, and it is this age-yellow vellum which suggested the Poet's name, "the old yellow book." It is small-quarto size, as Browning states,¹⁰ and contains about 250 pages. The Poet's description of the soiled streaks to be seen on many of the pages⁸ is but one of many illustrations of his minute accuracy in describing his Book. This is likewise true of the line descriptive of the old letters: "The sand, that dried the ink, not rubbed away." Furthermore, he translates literally the imprint of the pamphlets as he found it: "At Rome, in the Apostolic Chamber's type." And the absolutely convincing evidence of such accuracy in his vivid description of the finding and first reading of the Book is likewise confirmed by the word of Mr. Barrett Browning.⁵³⁶

VI. *The Book, its Contents:*

A description of the contents of the Book as supplementing the Poet's account of it in the first book of his Poem may now be of advantage.

The volume consists largely of eighteen printed pamphlets, and to these are added certain manuscript pages, evidently supplied by the collector of the pamphlets in further elucidation of the case. The manuscript portions include a title-page (p. i), a table of contents (pp. iii and iv); three letters bearing on the case and telling of the final execution of Guido (pp. ccxxxv-xl), and a transcript of the court record of the Tuscan trial and condemnation of Pompilia for her flight from her husband's home (pp. v-viii). This last would be directly accessible to the Florentine lawyer Cencini¹² and possibly was copied out with his own hand.

A subdivision of the eighteen printed pamphlets is given on the following page.

TABLE OF THE PAMPHLETS OF THE BOOK.

| | | | | | | | | | | | | | | |
|--|---|---|--|---|---------------------------------------|--|---|-----------|---|------------------------------|--|---------------|---|----------------------------|
| 18 pamphlets | { | Sixteen official pamphlets printed by the Court (the Reverend Apostolic Chamber). | { | Fourteen pamphlets concerning the murder trial. | { | Eleven arguments as to the fact and law in the case. | { | For Guido | { | By Arcangeli (Nos. 1, 3, 8). | | | | |
| | | | | | | | | | | | Three summaries of evidence, pamphlets 4, 7, 11. | Against Guido | { | By Spreti (Nos. 2, 9, 16). |
| | | | | | | | | | | | | | | |
| The final decree of court (pamphlet 18). | { | By Bottini (Nos. 6, 13, 14). | | | | | | | | | | | | |
| | | | Two unofficial pamphlets, without imprint. | { | Notizie di fatto, etc. (pamphlet 10). | { | Risposta a Notizie, etc. (pamphlet 15). | | | | | | | |

Sixteen of the pamphlets are official and documentary, bearing the imprint of the Papal Court (Reverendæ Cameræ Apostolicæ Typis, 1698).⁶ The other two numbers were privately and anonymously printed.

Fourteen of the sixteen pamphlets are concerned with and are a part of the trial of Guido and his accomplices on charge of murder, January and February, 1698;³⁶⁵ the two remaining official pamphlets, Nos. 17 and 18, have to do with the subsequent petition in court for the clearing from stain of the good name of Pompilia.⁴⁵⁴ These fourteen pamphlets include eleven arguments as to the law and facts in the case and three pamphlets of evidence admitted in the trial.

The eleven arguments present to us, as it was originally presented to the judges, the legal battle of the trial. They make little effort to give a consecutive narrative, but are chiefly devoted to the establishing or refutation of certain points of law. Matters of fact appear but fragmentarily, and are then distorted to a particular professional end; the truth of the tragedy and the real claims of justice are of little interest to the contestants. Every energy of the defense is devoted to the establishing of the plea of *honoris causa*,³⁹⁹ while the prosecution is equally insistent upon the illegitimate delay in taking vengeance,⁴⁰³ and upon the five technical aggravations of mere murder.⁴⁰⁸ The whole is flooded with precedent upon precedent.³⁷⁸ They show much acumen and no heart, and justify Browning's word as "to the patent truth-extracting process." (RB., I, 1114.)

The three pamphlets of evidence, Nos. 4, 7, and 11, however, which included affidavits, letters and other documents bearing on the case, are more interesting. In them we come in immediate contact with the actors and eye-witnesses of the tragedy. Pompilia and Caponsacchi tell

the sworn story of their flight^{15 34} only ten days after their arrest. Fra Celestino, the confessor of Pompilia's dying hours, and his fellow-witnesses testify unanimously and urgently to her purity and Christian resignation.^{352 353} A former servant in the Franceschini household bears detailed witness to the meanness and cruelty of the home life in the old Arezzo Palace.¹¹⁰ Letters of the Bishop¹⁴³ and of the Governor¹³⁸ of Arezzo sustain Guido's accusation against the Comparini. The love-letters which Guido claimed he had found after the arrest at Castelnuovo, and whose authorship he ascribed to the fugitives, are given in large part.^{231 232} All of these matters are of considerable importance in the Poet's judgment of the truth of the case; yet we have undoubtedly lost considerable testimony offered in the murder trial, as several matters of evidence cited or referred to in the arguments are not given in the summaries at hand.⁵³² Of special importance among these are the confessions of Guido and his fellow assassins, which are given only in brief extracts (pp. cxxvii-xxx). These matters may have been left unprinted by the court, or they may have been purposely omitted by Cencini on account of his regard for the Franceschini family. They are usually referred to by citation of folio or page in the court records, which are now lost. Yet even in its incompleteness the testimony of the Book is invaluable to the Poet's art in remaking his story.

The purpose and authorship of the two unofficial, anonymous Italian pamphlets^{55 59} (Nos. 10 and 15) must be judged purely by internal evidence. They were no mere popular narratives of the case, such as a Grub Street pamphleteer would have produced in exploiting a famous contemporary crime. The authors try unsuccessfully to be popular in their style, but their own legal temperaments and attitudes of mind soon prevent the purely narrative and sensational treatment common in pamphlets on famous crimes. The pamphlets were evidently written and printed either by the lawyers in the case, or by some one in their employ. Certain internal evidences, which need not be given here, lead me to believe that they were written by Arcangeli and Bottini themselves. The first of these, *Notizie di fatto e ragione*,⁵⁵ attempted to stir public sentiment in behalf of the accused while excitement over the trial was at its height. The rejoinder charges it with attempting "to insinuate a false impression into the dull heads of the crowd."⁶¹ This rejoinder⁵⁹ was presented before the same bar of public opinion in the same semi-popular, semi-legal manner. It aimed to disclose ruthlessly the greed and craft of Guido. Both pamphlets were probably distributed throughout Rome and became the food for abundant gossip on this already exciting case. These two pamphlets, in fact, seem to have suggested to Browning his *Half Rome*⁵⁵ and the *Other Half Rome*,⁵⁹ though the Poet does not in either of these monologues follow closely the fact or line of thought of the corresponding pamphlet; yet there

are many striking correspondences between them which will appear in the corpus of notes at the close of this volume.

The three manuscript letters⁹ included in the Book were written, "in hands crabbed enough," from Rome on the evening of Guido's execution. They tell of the delay of three days, February 18 to 21, in favor of Guido, which was finally overruled by the Pope.

And these are letters, veritable sheets
That brought posthaste the news to Florence, writ
At Rome the day Count Guido died.

The first of these is from Arcangeli, and is quoted with close verbal accuracy in Bk. XII, 239;⁴⁵⁰ of course, the "*Hac tenus senioribus*," with what follows, is purely Browning's humorous fiction in keeping with the pleasant rascality of the first lawyer. The other two letters were written by Gaspero del Torto and Carlo Ugolinucci, and have but slight correspondence with the second and third letters of the Poem, though some of the material is used elsewhere by the Poet.^{428 429 447-49 451}

Such are the contents of this Book, and they assure the reader that it not only now is, but always has been, a unique volume. Of the manuscript portions, especially the letters, there could have been no duplicate. And very few copies of the pamphlets were probably printed—merely enough for the use of the judges and lawyers and recorders during the trial, and not for public distribution. The history of the Book during "the decades thrice five" from the time it first began gathering dust in Cencini's law library until it fell into the Poet's hands on the market barrow is utterly dark.

From this account of the contents of the Book it is plain that the component parts, while organized partly by the fact that all emanated from the Franceschini murder trial, are from many different minds with diverse attitudes toward the fact in hand. Accordingly, in style, in sentiment, and in mere matters of fact, the various parts of the Book are at odds with one another. The legal arguments, moreover, are fashioned by minds far remote from art purpose or art effect. Their casuistry and sophistry are utterly divorced from such human sentiment as might naturally arise from the case. Pity for the wife, sympathy for the husband, admiration or reprobation of the priest—such natural feelings as we should expect to spring spontaneously from contact with this tragedy—are nowhere to be found in the Book. Wherever there is show of sentiment, its rhetorical parade betrays its insincerity. These lawyers evidently had a job on which to exercise their professional cunning, and they have little conviction as to the rights or wrongs of the case. Such an attitude is as utterly remote from that of the artist as is possible; for to the artist every fact must be steeped in feeling, which must flow from deep wells of emotional life. It is only in the

affidavits of Fra Celestino, of Pompilia, and of Caponsacchi that we find such perennial source of human feeling. For the rest, Browning had to breathe mightily on a valley of dry bones, before these men and women of a former day could stand erect to play over again their parts in that long-forgotten tragedy.

Still further, the style of the Book is in general far removed from such as the artist employs. The testimony is in plain, pedestrian, rather amorphous Italian, rising to effective style only in part in the affidavits of Caponsacchi and Pompilia, while the law Latin partakes of the worst stylistic vices of its technical nature and of its late composition. It is inaccurate grammatically, amorphous rhetorically, and utterly without the lift which a lawyer with good command of language should give to the treatment of a technical subject. Nor are there such brief flights of oratory enkindled with feeling and imagination as might naturally arise in the progress of a case which deals with many of the deepest feelings. All this makes the Book the duller reading to the modern reader and the more forbidding to the artist. Yet Browning was by no means daunted thereby, and rose to some of his own most remarkable flights of stylistic power in retelling the story he found here.

VII. Minor Additional Source-material:

The case, sensational as it was, in its own day, evidently had but the moment's brilliant "usurpature" of the rocket. Soon the story dropped out of the oral and written annals of Rome, so that it left no trace there for the interested search of the Poet (RB., I, 422-56). A friend, however, somewhat later found in London an anonymous manuscript account of the murder (pp. 209-13). This seems to have been written, a few years after the trial, by a man who had no personal knowledge of the case, but who evidently had a leaning toward Pompilia's side of the story, and who had read closely her own affidavit and the second anonymous pamphlet of the Book. It is much more popular in style than the rest of the material described above, and would make a good newspaper story. It was evidently not written with a legal bias. In this pamphlet the Poet found some interesting material not given in the Book. This does not change the bearing of any important facts in the tragedy, but gives numerous descriptive details which were freely used by the Poet. It is probably less reliable as a source of information and evidently misstates two matters of fact from the testimony of the servant Angelica¹¹⁰—namely, the Canon Girolamo's attack upon Signora Violante and Signora Beatrice's denial of hot coals for Violante's warming-pan. Nevertheless the Poet accepts it for the purposes of his art, and weaves its details indiscriminately with the rest. It is therefore the secondary source of the Poem. It contributes such

interesting details as the name of the babe, Gaetano,²⁰ the twenty-two dagger wounds of Pompilia,³²⁶ the exposing of the murdered corpses in San Lorenzo,⁵⁷ the pursuit, arrest, and final execution of the murderers.^{331-42 433-44} Books IV and XII make especially important use of it. The pamphlet was printed privately by the Philobiblion Society in 1870, and has been translated in part by Mrs. Orr in her Handbook. In reprinting it here the editor of this volume has used italics to indicate the portions which present fact not already accessible to Browning in the Book.

Three other fragments of evidence fell in Browning's way. One is a little pen sketch of Guido on a loose sheet of paper, made shortly before his execution; it is reproduced in this volume (p. 275) from the original, now in Balliol College. Another is the water-color drawing of the Franceschini arms, which was sent to the Poet by his friend Kirkup.* It was then pasted on the front inside cover of the yellow book. The Poet reads into this sketch a certain significance; for it is symbolic of the greed and violence of the Franceschini family.⁴⁷ And Browning evidently found and used the description of the torture of the vigil in Farinacci.^{526 336-9} The Poet assures us in the first and last books of the Poem that he made further search for the fact of the case in the records of Rome and Arezzo, but largely in vain.

Only a few years ago, another Italian manuscript narrative of the Franceschini case was found in the Royal Casanatense Library, Rome. Browning never saw it, and hence it is not a part of the source of *The Ring and the Book*, yet the pamphlet gives some interesting additional information and presents the characters of Abate Paolo and Guido and of the Comparini more fully than elsewhere. In several cases it confirms the imaginary amplifications which Browning made of the data before him. The pamphlet is translated in full (pp. 217-225).

VIII. The Legal History of the Franceschini-Comparini Dispute:

It may be well now, for the sake of elucidating the Book still further, to give an account of the complicated series of lawsuits which preceded and conditioned the murder trial, and which are continually discussed in the course of the Book.

The first of the series was a civil suit brought in the spring of 1694 against the Franceschini by Pietro Comparini, for the recovery of the dowry already paid and for the annulling of the dowry contract.²⁶⁰ This was brought on the ground that Pietro had just learned, from the

* Barone Kirkup to Wm. Rossetti, Sept. 18, 1868, "Another book of his (Pietro Aretino) is a dialogue on Cards, in which some excellent stories of gamblers are introduced. I sent some of them later to Browning, who is writing a poem relating to Arezzo, in which gambling will make a great figure."

confession of his wife, that Pompilia was not his own child, as he had always considered her. Guido won this case,²⁶³ but it was appealed²⁶⁴ and remained undecided²⁶⁵ even to the time of the murders, more than three years later. Part of the evidence included in the summaries of the Book was first used in this trial: namely the testimony of the servant Angelica,¹¹⁰ the letter written to Abate Paolo,¹¹² and the letters of the Governor¹³⁸ and the Bishop¹⁴³ of Arezzo.

Next came the *processus fugae*,²⁶⁹ the criminal case brought by the Fisc, or the State, at the instigation of Guido, in which Pompilia and Caponsacchi were defendants from the charge of running away and of adultery. This was introduced immediately after their arrest in May, 1697, though it was not until the following September that the court sentenced Caponsacchi²⁷¹ to three years' banishment to Civita Vecchia, and remanded Pompilia to the convent of the Scalette²⁷⁶ as prison, without giving definite decision concerning her. Much of the evidence in the summaries of the Book had been first used in this trial, and then later had been carried over into the murder trial. Such are the packet of forged letters,²⁸² the affidavits of Caponsacchi³⁴ and of Pompilia,¹⁸ and of the group of Aretine citizens who swear to the ill-treatment suffered by Pompilia in her husband's home.¹¹¹

Parallel to this suit, but of somewhat later date, was the Aretine criminal prosecution of Pompilia, and of Guillichini²⁹⁵ as her accomplice, on the charges of flight from her husband's home and of adultery.²⁹⁴ This was not decided until December, 1697. We know nothing of it except in the manuscript report given in the Book (pp. v-viii). In it strong insistence was evidently made on a preposterous amount of theft on the part of the fugitives.²⁰⁰ Browning, in the words of the Pope, speaks with strong indignation concerning this travesty of justice, as "that strange shameful judgment, that Satire upon a sentence."

In the fall of 1697, after her imprisonment in the monastery, Pompilia brought suit for divorce from Guido on the grounds of cruel abuse,²⁶⁶ and he in turn seems to have taken counsel as to whether he had sufficient grounds for divorce from Pompilia;²⁹⁷ but, as the replies were doubtful, he did not enter further into the suit. The divorce case was still undecided at the time of the murders.

Then there was the murder trial against Guido and his fellows,³⁶⁵ brought in the Roman criminal courts soon after the murder, and terminating by the sentence given February 18, and the execution February 22, 1698. This is the case presented in the Book. In it the Fiscus,³⁶⁸ or prosecution, as we call it, was represented by Bottini and Gambi as Advocate and Procurator respectively; while the defense was maintained by Spreti and Arcangeli, Advocate and Procurator of the Poor,³⁷⁴ respectively. "Poor" means nothing more than "the accused." The *Procurator* and *Advocatus Pauperum* were quite as much servants

of the State as were their opponents, and were in no sense our modern private counsel hired for and by the criminal and his friends.³⁷⁶

While the murder trial was still going on, suit was brought against Tighetti, Pompilia's trustee and executor, by the monastery of the Convertites.³⁶⁴ By law they could claim the property of any woman of evil life who died within the city of Rome. Tighetti seems to have been harassed at this same time by the Franceschini, who were trying to seize the dead Pompilia's property. So he met these attacks by claiming, through his counsel Lamparelli in pamphlet 17, a court declaration of Pompilia's good fame, which would free him from these lawsuits. This decree was finally given in pamphlet 18, in September, 1698,⁴⁶⁶ and with this decree the legal history of the Book comes to a close.

IX. The Order of Proceeding in the Murder Trial:

We need also to speak of the order of proceeding in the murder trial, and this the more as the pamphlets in the Book are not arranged quite in their chronological order. To avoid the confusion which might arise therefrom, the probable order, as based upon internal evidence, is suggested.

The trial evidently began in the month of January,³⁶⁵ only a few days after the murders. There seem to have been two distinct stages of the trial.⁵²⁴ In each of these, contrary to the English practice—the practice of the Common Law—the Defense speaks first³⁶⁷ according to the practice of the Civil Law. Arcangeli doubtless opened the debate by pamphlet No. 1, which he prefaces by a connected statement of the facts in the case. He was supported in this by Advocate Spreti in No. 2, and added a word in behalf of the fellow assassins in No. 3. The case for the Prosecution, on the other hand, was evidently opened with the statement of fact made by Gambi in No. 5. This was seconded by the two arguments of Bottini, Nos. 6 and 14. These six arguments are based on the two summaries of evidence, Nos. 4 and 7.

This first stage of the trial seems to have been unsatisfactory to the Prosecution, and the torture of the vigil⁵²⁶ was now demanded that the case might be the plainer. For Guido had confessed only that he had given orders to mutilate and not to kill, and had also qualified his confession in other ways. The Defense strongly resisted the infliction of such cruel torture, but were unsuccessful, and Guido and his associates were tortured anew before the second stage of the trial opened. A more extended account of this debate and of the particular nature of the torture of the vigil is given in Note 526. Evidently a much fuller confession was received from the accused on this reëxamination under torture.

The second stage of the contest was far more searching and more skilful on both sides; we have here the really formidable legal meeting. Franceschini's case was again presented by his two lawyers in Nos. 8 and 9. In response to these Gambi prepared brief No. 12 in three hours, as he declared; while the most important word for the Prosecution was now spoken by Bottini in No. 13. This last pamphlet contains reference to the third Summary, No. 11, which must have been made up after February 9. The final word in the trial was the rebuttal made by Spreti, No. 16. A missing argument for the Prosecution, mentioned in Ugolinucci's letter (p. ccxxxix) seems to be still lacking.

The case then passed to judgment, and the accused were found guilty by the board of judges, and were sentenced on Tuesday, February 18, 1698,⁴³² to death, "by heading or hanging as befitted rank." We learn from letters of a subsequent delay of three days for appeal to the Pope on the ground of Guido's "clericate."⁴² This was overruled by the Pope on the 21st, and the sentence of the court was executed upon the criminals the next day.

X. Browning's Peculiar Interest in his chance-found Material:

Such was the treasure-trove found by the Poet that June day—

This is the bookful; thus far take the truth,
The untempered gold, the fact untampered with.

Nor could the Book have fallen to a more interested reader. With eyes riveted on its pages, he made his way home to Casa Guidi, and there all day long continued to pore over its pages till

The book was shut and done with and laid by

* * * * *

And from the reading, * * *

I turned, to free myself and find the world.

As he stepped for a breathing-while out on the little terrace, the inert materials of the Book were kindled to a new life by his imagination until

then and there
Acted itself over again once more
The tragic piece.

The inert chaos of the Book had become a vital cosmos—those long-forgotten names were once more living persons to him, and their tragedy was athrob with meaning. The tragedy was now potentially recreated. The Poet never lost the exhilaration of his creative mastery of the Book, which he felt the first night of his acquaintance with it.

Nor is it difficult to see that in many ways the Book was such as to appeal strongly to a man of Browning's peculiar temper of mind.

Since early boyhood he had delighted in out-of-the-way, forgotten books, in dusty memorials, in nondescript records of all kinds. His father's shelves were rich in quaint treasures exhumed from bookstall rubbish. *Sibrandus Schafnaburgensis* lets us share the Poet's humorous resentment against the leaden stupidity of one volume of this kind. *Transcendentalism* was probably the outgrowth of another such experience. In fact, Browning's recondite and curious reading was of almost unparalleled extent. From rusty folios he had exhumed his Paracelsus, while still little more than a boy, and had made those old records the basis of the greatest of his earlier poems.

He went to such soiled volumes with a stout heart and a strong brain, well fortified against their crude stupidity. For, deeply bedded in them, he sometimes found golden veins of true humanity; at some point or other, vital thought or passion might greet his search. Such chance gains were doubly precious to the Poet, and had in them the gambler's exhilaration besides; researches of this kind were peculiarly characteristic of his mind and art. In the Book he found material that was unusual enough; yet it was filled with humanity, "red ripe at the core."

We are also informed in Kegan Paul's *Memories* that Browning was acquainted to the minutest detail with recent famous criminal cases.* It is hardly necessary to point out that this was from no thirst for sensationalism, but as a searcher of the human heart he was profoundly stirred by the underlying motive of the criminal. What do these bad hearts mean? What place have they in God's world? How can the all-powerful and all-loving Father permit his children to plunge into such an abyss of evil? Browning was an optimist, not because he shut his eyes to the villain and the brute in human nature, but because he would find even for them a place in his rational explanation of God's world. Mark how he lingers over the suicides in the "little rustic morgue," and note the closing stanza of *Apparent Failure*. Moreover, the salvation of Ned Bratts, grotesque as may be its manner, has a profound place in Browning's thought of God and man. The murderous lust of Ottima and Sebald is finally pierced by a ray of light: "God's in his heaven, all's right with the world." Crime is far too important a fact in life for the poet of man to ignore it; he will "paint man, whatever the issue." Hence this story of Guido's brutal greed, this dark record of crime, proved strongly attractive to Browning, not

* On one occasion, at the table of Mr. Leighton, father of Lord Leighton, the conversation turned on murder, and to the surprise of everybody Mr. Browning showed himself acquainted with the minutest details of every *cause célèbre* of that kind within living memory. He quoted a ghastly stanza on Thurtell's murder of Mr. Weare:

His throat they cut from ear to ear
His brains they battered in,

and was rather piqued that another guest was able to complete the lines with
His name was Mr. William Weare
He lived at Lyons Inn.

for its sensational interest, but for its profound spiritual meaning. In his *Red Cotton Night Cap Country*, he again seized a subject of this kind, but failed to interpenetrate it with his own master power, as he did this sordid tragedy.

It is also possible that Shelley's example in handling the somewhat similar Cenci story may have given an additional interest to the Book. Browning well knew the work of Shelley and the popular celebrity of the story. Though Shelley had been stimulated by the supposed portrait of Beatrice, he had also drawn his facts from a contemporary pamphlet. In fact the famous murder trial of Beatrice is cited as a precedent in the course of one argument of the Book (p. ci). However this suggestion of the value of the material may have operated on Browning, he is utterly independent of the example of his predecessor in his art of using the story of the murder.

Yet all these sources of interest in the Book seem quite secondary to the Poet's recognition of Pompilia and his eager desire to clear her memory. Mrs. Orr has said that Browning was brotherly rather than chivalrous to the women of his acquaintance, and they were many. Yet one can not doubt the fine chivalrous attitude of Browning toward the women of his own creation. He is ready to believe in woman, to defend her, to shield her from misrepresentation, to have faith in her heart. His bad women, such as Ottima and Lucrezia, stand out all the more prominently because they are exceptional and because they are so gross a perversion of woman's true nature. Woman is normally a help and an inspiration, yes, and a quickener of spiritual perception in the more obtuse nature of man. Browning's love poems are full of the thought which culminates in *By the Fireside*. Women like Pompilia, who were the victims of hard conventionalism or of the brutality of man, always had his heart's sympathy, as we can well see in *The Flight of the Duchess*, *A Blot in the 'Scutcheon*, and *My Last Duchess*. How true his chivalry rings in *Count Gismond* and *The Glove!* In the last, Browning was dealing with a story centuries old, and its various versions closed with the glove flung straight in the lady's face, and a moralizing tag appended:

Not love, quoth he, but vanity,
Set love a task like that.

Browning's own glove of challenge was as prompt in reply as Count Gismond's, and in the sequel which he has indignantly created he gives De Lorge his due, while the lady is borne off by the page to live a life of true love. But we have said enough of this chivalry of Browning as a creator of women. In reading the Book, he found a girl, a child-mother, wronged. The lawyers on both sides had used with little reverence the "lily-thing to frighten at a bruise." They spoke of her as a "wretched child" and "unfortunate girl," but they were solely intent

on their technical pleadings, and not the slightest drop of human pity warmed their hearts. But behind this grim record of cruelty and greed, on suggestion of the affidavit of Fra Celestino,³⁵³ Browning perceived her woman's soul; she had been misjudged, she lay all undefended—a Browning to the rescue! Not that he would misrepresent the truth for her sake, but to his perception her case was all-sufficient in its bare truth. His prepossession, like that of *Other Half Rome*, would right her, and it doubtless had fully as strong conviction of its rightness. It had also the advantage of being by one of the most searching and most truthful of human hearts. Yet he did take sides, and his faith in woman made him take the woman's side, whether he would or no. This chivalry, I feel, more than anything else, occasioned Browning's prolonged creative activity upon the story and governed his whole attitude toward his material; and this, in all probability, sprang in almost instant impulse when he first "fused his live soul" with the Book, and when for the first time the tragic piece acted itself over again before his mind's eye. Browning was as truly and as promptly Pompilia's lover as was Caponsacchi.

Nor do we sympathize with the paradox of Mr. Chesterton that Browning said: "I will show you the story of man and heaven by telling you a story of a dirty book of criminal trials, from which I select one of the meanest and most completely forgotten." Something more than meanness and pettiness drew his attention; it was a story of a suffering woman, cruelly tormented by her husband, who was backed by all conventional society. In fact the case seemed all but hopeless for Pompilia, for by the custom and morals of the society in which she lived there was naught for Pompilia to do but submit, and her slightest resistance would have seemed censurable by those standards. And yet God's hand had brushed aside all cunning contrivances of man and had rescued her by the agency of the hero-saint Caponsacchi. It was both a tragedy and a triumph, capable of moving pity and terror and exaltation. It was neither petty nor trivial, even though its actors were not kings and though its stake was only a woman's body and soul.

XI. The Choice of an Art Form:

When Browning had determined to give full expression to himself through the material of the Book, he must have faced very early the question of artistic form. Should he make of it drama or epic or romance or novel? Shelley had used the drama for the Cenci story, and there were marked dramatic possibilities in the catastrophe of the Franceschini; but the drama had been abandoned twenty years previously by Browning, after he had fairly tested his power of expressing himself through its means. That he also recognized the novelistic possi-

bilities of the material is evidenced by his giving it to Miss Ogle. Behind Pompilia he saw the panorama of the environing conventional society, with its trafficking for dowry, its cynical unfaith in purity, and the dominating presence of a worldly church and a selfish churchmanship. The tragedy lay too deeply rooted in that society to be divorced therefrom, and Browning knew that particular world, with all its types and ideals, as few men have known it. He must have seen an historical novel in the making, and it was truly there. His own results indeed have something of the novelist's arts in them—in fact the poem is novel, as much as it is epic or drama. Yet Robert Browning was not a novelist but a poet, and instead of experimenting in a new art, he did what he had so often done, modified his "art familiar" to adapt it to his new theme, and the form he adopted drew much suggestion from the well-elaborated technique of the novel.

Browning was within certain limitations a very prolific creator of poetic forms. He scarcely ever departs from the drama or the dramatic monologue, but he has modified them with much variety. He was never conventionalized nor stereotyped in his art, either by the tradition of other artists or by his own achievements, and his successes did not repeat themselves. *Paracelsus* was warmly praised by his small circle of admirers, and he himself prized *Pippa Passes* highly, but neither of them is repeated. We wish in vain for a repetition of the mad-cap balladry of *The Pied Piper*, or the swift-thrilling power of *The Flight of the Duchess*. His own words in *James Lee's Wife* are apropos:

Nothing can be as it has been before ;
 Better, so call it, only not the same.
 To draw one beauty into our hearts' core
 And keep it changeless ! such our claim ;
 So answered,—nevermore !

* * * * *

* * * Rejoice that man is hurled
 From change to change unceasingly,
 His soul's wings never furled !

In *The Ring and the Book*, indeed, he merely modifies his familiar art of monologue writing to suit his material. The single monologue would be far too narrow. No one point of view could include all the facts in the case, much less deploy the whole range of motive surrounding the tragedy. There must be room not merely for the main personages, but for the environing society with its motives and ideals. There must also be opportunity for the revelation of the souls of the actors, for in his dedication of *Sordello* (1863), written when *The Ring and the Book* was being planned, he says: "My stress lay on the incidents in the development of the soul; little else is worth study. I, at least, always thought so." Browning's method of using the well-tried mono-

logue to retell the Book is simple but effective. He marshals the tragedy through ten successive monologues and adds the necessary prologue and epilogue. In the monologues of the actors themselves he could present the passionate heart of the tragedy; in the rest he could give its environment and interpretation. Nor could Browning, with his own unflagging interest in the play of human motive, have anticipated the oft-repeated criticism of excessive repetition. Effective as the device is, however, Browning never again uses the monologue in this way.

XII. The Ten Monologue Plan suggested by the Book:

We may add still further that the suggestion of this art form lay plainly in the Book itself. There we read the professionally biased arguments of the lawyers, the more violently prejudiced, popular Italian narratives (suggestions of *Half Rome*⁵⁵ and *Other Half Rome*⁵⁹), and the affidavits of Caponsacchi, Pompilia, Fra Celestino, and the housemaid of the Franceschini. All these phases of truth lie side by side in the Book, illustrating the many ways in which the fact of the story may be told. Browning saw therein that truth is many-sided, and that certain phases of the truth would meet the eye of *Half Rome* which would be unseen by Caponsacchi. If then he desired to tell the whole truth of the tragedy, the variety of these accounts in the Book itself must have forced upon his attention the real power of this method in presenting many-sided truth. If he should tell the story from one standpoint only, he would fail of truth, no matter how conscientious he might be. For to use the words of Merlin in his riddling triplets: "The truth is this to me and that to thee." Let the reader think deeply upon his two figures of speech in Bk. I, 1343-78, before adjudging the plan of this monumental poem. And, may I add, we should utterly abandon the search for conventional epic form in a poem which is epical only in length.

When Browning had adopted the multiple-monologue form, why should he use ten monologues, neither more nor less? Was he padding out to reach the conventional twelve-book epic, as Tennyson divided one of his *Idylls of the King* for that purpose? Are the lawyer's monologues, as is often charged, unnecessary? If mere pleasant reading is the end, possibly so; but they are as essential to the architecture of the poem as are the other eight monologues. More than thirty persons are named in the Book. Browning assigns monologues to only six of these, but quotes from several others, such as Abate Paolo, Fra Celestino, and Violante, in such a way as to throw light on their characters. We might well listen to the complete version of the story from any one of these. Browning has also added the purely hypothetical and typical personages of the first three monologues. We feel, however, that the ten mono-

logues need no eleventh, nor could they be cut to nine. Browning himself has pointed out his three groups of three each, the actors, the law, and Rome's gossip. If this tragedy is to be understood with its environment, all of these are necessary.

Browning chose as speakers three actors of the story, and three only, because he saw that the heart of the strife lay between Guido, Pompilia, and Caponsacchi—his ideal villain, his ideal saint, and his ideal hero. Their moral and spiritual relationships with one another were the real tragedy and triumph, both in the fact of life and in the ideals of art. The families of the Franceschini and Comparini, and all other persons in the story, were merely accessories thereto. It was inevitable, from his very material, that Browning should make the monologues of Guido, Caponsacchi, and Pompilia the center of power and interest alike in his poem. The triangular plot, moreover, is common enough in Browning, as in all literature. It is exemplified in *Colombe's Birthday*, *The Return of the Druses*, *In a Balcony*, *A Blot in the 'Scutcheon*, *King Victor and King Charles*, *A Forgiveness*, and the *Inn Album*. The monologues of Violante, of Abate Paolo, of the Bishop, of Fra Celestino might have been made very interesting in themselves by such a searcher of soul as Browning, but they would have diverted attention from the essential interest of the plot, namely the relationship of the husband, the wife, and the St. George of the story.

Then, as to the reason for three official monologues, we must remember that the Book is the statement of a law case and is not a tragedy. Much of the fact as regards the main actors came to Browning filtered through the prejudiced arguments of the lawyers—so shrewdly sophistical, but so untrue. Browning was in no mood for such jugglery with the truth, and the vials of his ironical wrath are poured abundantly on the "truth-extracting process?" The presence of such a conventional institution of law, so far removed from real justice and truth, was one of the profoundly significant aspects of this tragedy in real life. Pompilia's position was all the more helpless and her rescue the more desperate because of it. The historic atmosphere was conditioned by its method of argument. Hence Browning chose a sample speech from each side of the murder trial. He reproduced in Bottini and Arcangeli, with all possible fidelity, the impression these lawyers in the Book had made upon himself. The ineptness, the heartlessness of the law, had indeed made the tragedy all the darker. Unwilling, however, to leave the matter thus as an occasion for bitterness over the failure of human justice, Browning confronted the lawyers with a third official verdict—one suggested by a mere hint in the Book—one that had not merely come from a seat of authority, but from the heart of a great, good, wise man. Therein the Poet gave his own most deliberate verdict in the case. Truth's debasement as well as its exaltation in the human insti-

tution of law were absolutely essential to the truth of the story as the Poet had found it; for had not the right triumphed, and had not Guido, probably to the surprise of his contemporaries, finally been brought to justice? This, as Browning felt, could have been achieved only by the divine interposition of God's representative in the Pope.

Official judgment of the case of Guido, Pompilia, and Caponsacchi lay plain upon the face of the Book. But Browning's knowledge of human nature gave him no less confident assurance of the abundant gossip that swept over Rome and swirled around the actors, in this as in all the tragedies of life.

The world's outcry

Around the rush and ripple of any fact
Fallen stonewise, plumb on the smooth face of things.

This was also suggested by the two popular pamphlets^{55 59} with their leveling of the case to the gossip-loving Rome—that outward world which had been potent in forwarding the tragedy. For that gossipry had watched with gusto the mud-flinging of the Franceschini and Comparini; they had been a heartless barrier-wall around the struggles of Pompilia to escape; they had enjoyed the rankling gibe against the Franceschini, and had sneered cynically at the Christian heroism of Caponsacchi and the saintly purity of Pompilia. In fact, to them the catastrophe itself was little more than a delicious piece of sensationalism. Not that this environing world was malicious or depraved—it was merely human in its weaknesses. Browning had often presented a past social condition through typical personages. Ruskin in speaking of *The Bishop Orders his Tomb* says: "I know no other piece of modern English, prose or poetry, in which so much is told of the Renaissance spirit—its worldliness, inconsistency, pride, hypocrisy, ignorance of itself, love of art and of good Latin." The Poet presented many such typical personages in *Bells and Pomegranates*—*The Soliloquy in a Spanish Cloister*, *A Toccata of Galuppi's*, *Johannes Agricola*, *The Grammarian's Funeral*, and many others. When Browning, therefore, saw the need of presenting the Rome and Arezzo of the late seventeenth century as an environment of his tragedy, a necessity for any true presentation of the story, he chose three typical personages and named them in such a way as to emphasize their purely typical significance. They interpret the spirit of their day and prepare the reader for an intelligent understanding of the words of the main actors who follow.

It may be well here to point out the fact that in his purpose not merely to tell a story but to explore all its ramifying motives and effects, to reproduce the intricate cross-play of many minds in a story, the Poet has conceived these first three monologues with much skill. And it is quite impossible to divide off the important later monologues for sep-

arate reading, as a really effective whole. In the economy of his Poem as a whole, the narrative of fact is presented fully in *Half Rome*, *The Other Half Rome*, and *Tertium Quid*. Still more, in these monologues the author inserts certain passages, which are distinctly preparatory for the later and fuller study of the three main characters. Bk. III, 839-867, is a preparation for the understanding of Caponsacchi at the opening of his story, while 1340-1375 offers characteristic sample speeches of both Pompilia and Caponsacchi. Bk. IV, 581-627, in like manner gives us a preliminary word from Guido. The Poet thus prepares one who reads the poem in regular order, not merely to listen to the story from the chief actors, but to understand their hearts by the interpretation they offer for facts already known. Not the fact but the meaning of fact in character is thus emphasized in the three main monologues. The Poet is also able, through this device, when he comes to the most important portion of his Poem, to skip from one significant fact to another, without dwelling on the necessary narrative details which would otherwise demand room, but would hinder the mere character study. These three earliest monologues are of great importance, indeed, in giving the whole environment which surrounded and almost controlled the life of the main actors.

This choice of the multiple monologue form was also well adapted to preserve the Book in all the fullness of its internal discrepancies of fact and motive. The Poet found each act, each event, subject to interpretation and counter interpretation. Guido's lawyers branded as a lie Pompilia's evidently mistaken statement that in her flight she had reached Castelnuovo at dawn and had been there only an hour when overtaken.²¹² The Prosecution, on the other hand, while acknowledging the falsity of the statement, finds casuistical excuse for it. Browning felt that both were wrong, and that the real Pompilia had told no conscious falsehood. Here, then, were three different interpretations of the one fact, all necessary for the presentation of the full truth. How could the artist do this in any straightforward narrative form? He would have to choose but one interpretation, and his very choice, the Poet felt, would be an untruth. He accordingly devised this multiple monologue form for this very end. In the repeated monologues, he could easily find room for even the most antithetic interpretations of fact and motive. And he thus threw the final choice of alternatives upon the reader, who became, as it were, the spectator in a living and moving tragedy where all the rights and wrongs of the case were still left undecided, and where truth was still changing and variable because alive.

It is thus evident that the Poet's choice of form was conditioned and governed by both his raw material and his purpose; and he has therein achieved a masterly success in form and organic wholeness,

which is one of the most difficult feats for the writer of a long poem. Yet he has been a law unto himself in this matter—looking not to established successes of the past, but working out his own problem with rare originality and power. He abandoned the prestige of the epic, of the tragedy, and of the novel, and established a new genre which must be judged by its effect and power, and not by any long-established rules of art.

XIII. Browning's Fidelity to the Fact of his Source-material:

We turn now to the all-important question of how the Poet deals with the fact of his Book in creating his masterpiece. No one can read the Poem and its source side by side without meeting many illustrations of the minute and accurate use of his original. Scores of trivial details have been governed, perhaps unconsciously to the Poet, by the Book. Browning must have been saturated with the Book * before he began writing the Poem, so that the facts marshaled themselves swiftly and without effort into their places in his story. The body of notes at the end of this volume offers hundreds of examples of such use of fact. The names and characters, the dates, the events, the situations, and motives, the very turns of expression in the Poem, are continually drawn from the matters of fact in the Book. Browning's debt in these respects can scarcely be overstated. On the other hand the passion of the story, as Browning has conceived it, the spiritual meaning of the tragedy—all the real poetry—are created by the Poet. They are created, however, in strict accordance with the detail fact in the Book. In few cases, indeed, does the Poet violate the ascertained fact of his sources, even in his freest range of creation.

In the matter of the chronology of the tragedy he is almost painfully accurate to the Book. The story therein is definitely dated in most of its detail, though these time-references are much scattered. It is evident the Poet has mastered all these dates carefully. He is studiously accurate whenever he mentions in his narrative the time of day,^{187 188 211 320 347} the days of the week,^{184 301 432} the seasons of the year,^{85 155 319 481} intervals of time,^{43 98 194 285 290 300 303 350 373 436} or ages of persons.^{44 64 86} The two opening lines of Pompilia's monologue, which give her age, are accurate to the day.¹⁵ Her words, "there wants of it two weeks this day," afford a characteristic example of how he remains true to fact even when athrob with the deeper spiritual passion of the poem; for this touch is expressive of the deep yearning of Pompilia for her absent babe.²³ Caponsacchi's statement, "there's new moon this

* Orr's Life, p. 409: "He had read the record of the case, as he has been heard to say, fully eight times over before converting it into the substance of his poem."

eve,"¹⁸⁵ and "Easter's past,"¹⁷⁵ had evidently been verified by the Poet. His "Jubilee gave the hint"¹⁰² is from the Book. In one case he has intentionally changed a date—that of the flight of Pompilia and Caponsacchi from Arezzo, but this was for a definite artistic purpose.¹⁸⁴ These minute accuracies had become a habit of Browning's mind in dealing with the story, and characterized his art in his poetry generally.

The names of places, of streets, of buildings, and of institutions connected with the story are found by the Poet in his material, and are not ordinarily supplied by his own imagination. The line of march to Guido's execution is literally translated.⁴⁴⁰ Not a single important locality has been added by the Poet, though he has often elaborated the mere name as he found it, with abundant descriptive detail. For this purpose Browning had evidently visited all of the localities of the story, to gather local color, and he describes such places with his eye on the object.* This is to be seen in his account of the inn at Castelnuovo,²¹⁰ San Lorenzo Church,⁵²⁹ the Pieve,²⁷ and the Piazza del Popolo.⁴⁴² Other localities of but minor importance are likewise drawn from the Book, such as the villa of Vittiano,³¹¹ the New Prisons,²⁵⁵ the Convent of the Scalette,^{276 278} the home in Via Vittoria,⁶⁶ the barber shop in Piazza Colonna,⁷⁸ and the Torrione.¹⁸⁹

Furthermore, the names of the persons as given in the poem are found in his original to the number of thirty-three. The only names (except historic names which are sparingly and unimportantly used) that are added by the Poet are those of Luca Cini (II, 118), of Canon Crispi (VI, 1114), and of Curate Carlo (II, 159), all of them utterly unimportant. Even such trivial personages as the priest Romano,¹⁴⁴ Curate Ottoboni,²⁵ Monna Baldi,⁵⁸ Count Tommaso,⁴⁸ and we might add the nameless hairdresser⁷⁸ in Piazza Colonna, are drawn from the Book. The eight-year-old curly-pate who is so interesting to Arcangeli is of course fictitious, but he is named for his father Hyacinthus, or in Italian, Giacinto.³⁷⁵ All of the thirty-three persons named fill practically the same place in the story of Book and Poem alike. One may compare with this the practice of Shakespeare, who rejects or adopts the names found in his sources with utter freedom.

Moreover, the turns of expression and the choice of words in the Poem are not unfrequently governed by those of the Book. Such words as relegation, summary,⁵ quality,⁴⁰⁸ circumstance, instrument,⁴⁵⁸ index,¹³ calash,¹⁹² used in unusual senses are mere anglicizing of definite

* "A favor, if you have time for it. Go into the Church of San Lorenzo in Lucina in the Corso and look attentively at it, so as to describe it to me, on your return: The general arrangement of the building if with a nave—pillars or not—the number of altars, and any particularity there may be—over the High Altar is a famous crucifixion by Guido. It will be of great use to me. I don't care about the outside." Postscript of Browning's letter to Leighton, October 17, 1864 (Orr, p. 413).

originals, as may be seen by the note references. The reference to Guido as Sir Jealousy²⁸⁹ is drawn directly from *Il Geloso*, the Commissary²²⁸ from *Il Commissario*, the Convertites²⁷⁷ from *Convertitæ*, Vicegerent²⁶⁸ from *Vicegerente*, and the Public Force from *la Forza*.²²⁵ The expression "at the seventh hour,"¹⁸⁷ for one a. m., is drawn from *alle sett' hore*; "Tis one in the evening"³²⁰ from *Un' hora circa di notte*; and "my life not an hour's purchase"²⁵⁰ from *La mia vita era a hore*. In each of the three the Poet borrows the Italian idiom just as he found it. Still further the Poem affords several illustrations of his use of the speech of one of his characters practically as it had come to him. In such instances, however, he charges the commonplace phrases of the original with a new meaning and fits them into his own sinewy style—an interesting proof of his power as a stylist. Such is the explanation of the

Oh Christ, what hinders that I kill her quick?¹³²
of the

Tell him he owns the palace, not the street.¹³⁰
and of the

I have saved your wife from death.²²⁰

(Cf. notes 153, 330). Books VIII and XII of the Poem make extensive use of the source-material in this way. Here the Poet even governs his choice of words in his translation by those of his original, frequently using etymological derivatives at the expense of normal English.⁴³⁹ A good example of this is seen in the story of Samson repeated by Browning, VIII, 644-651.

Blinded he was, * * * * *
Intrepidly he took imprisonment,
Gyves, stripes, and daily labour at the mill:
But when he found himself, i' the *public* place,
Destined to make the common *people* sport,
Disdain burned up with such an *impetus*
I' the breast of him that, all the man one fire,
Moriatur, roared he, * * *

The italicized words are taken directly from the Italian *intrepido*, *destinato*, *impeto*, etc., of the account of the first Anonymous Author, B. 124:

He suffered with an intrepid mind the loss of his eyes and other grievous disasters, but when he saw that he was destined to serve as a pastime in public places, and when he there heard the jeers and derision of the people, the anger in his breast was so inflamed, that, all madness and fury, he cried out: "Let me die," etc.

In fact almost everything from lines 587-681 is thus closely paraphrased.⁴⁷⁶⁻⁸³ Instances of such close paraphrase are found scattered

here and there throughout the Book. Such is the Poet's paraphrase of the title page of the Book,² of the letter to Abate Paolo,¹¹² of the scraps of love-letters,^{159 161 237-41} of Caponsacchi's retort during cross-examination,^{244 246} of his decree of banishment to Civita Vecchia,²⁷¹ of Abate Paolo's final distress,³⁰⁵ of the words of Confessor Celestino,³⁵⁴⁻⁹ and of the final decree of court.⁴⁵⁶ The question will doubtless be raised here again whether such cutting of rough material into iambic pentameter is art, but we defer discussion.

This may naturally lead to the abundant law Latin, which has been the despair of many a reader of Book VIII, and which is found occasionally elsewhere. The Latin is not invented by the author, but is taken almost entirely from the Book, and its presentation in Book VIII is perhaps part of the truth of the impression of the Book upon Browning's Latin taste. In it he holds up the ignorant stylistic arrogance of the Book to ridicule. This monologue quotes the crude book Latin fifty-six times⁴⁶¹⁻⁵¹³ in quotations of widely varying lengths, drawn from all parts of the Book. The exactitude of the reproduction of these shows that they were not merely stray scraps that had clung to the memory, but were carefully copied by the Poet. In one case he made the mistake of reading *via* for *ira*,⁵⁰³ but elsewhere his modifications are slight, only such as are needed to fit the passage to the meter or context of the Poem—such as the substitution of antecedent for pronoun, changes in number or tense of words found, infrequent substitution of a synonym of different number of syllables, or slight omissions for the sake of brevity. One of these passages, the magniloquent peroration of Arcangeli's final argument,⁵¹³ is produced through a hundred lines as the peroration written by the Arcangeli of Browning's creation. This Latin the Poet translates or paraphrases with considerable freedom, allowing his sense of humor to add many a sly quirk, or his sense of irony to thrust home effectively. In fact the student of the monologue may gain certain side-lights on the character of the lawyer by the flavor of these paraphrases. In such work, of course, it is the subtle intellect of Browning rather than his creative passion which is speaking, and this phase of his art is undoubtedly on a lower artistic level; and yet to Browning it was essential to his conception of the Poem as a whole, as it was a reproduction of the effect of the real Arcangeli upon himself.

In the legal lore and technical legal phraseology so abundantly displayed throughout the Poem, and especially in Books VIII and IX, the Poet evidently depended very largely upon what he found in the Book. This display of out-of-the-way technical lore has perhaps caused some readers to stand in awe of the learned acquirements of Browning in the ecclesiastical law. But the study of the Book makes it evident that he learned almost all of his law from the Book and

learned some of it amiss. The various points of law^{223 298 362 400-24} made in the Poem are taken from the Book, and also the terms *usufruct*⁸⁸ and *domus pro carcere*,²⁸⁶ the reiterated plea of *causa honoris*,³⁹⁹ the discussion of the bearing of a murder *ex intervallo* and *incontinenti*⁴⁰⁴ and the various ramifications of these two.^{406 407} Likewise every point in the discussion of the technical aggravations⁴⁰⁸⁻⁴²⁰ of the crime was found in the Book. All legal precedents and authorities cited^{379-85 394-8} were drawn by the Poet from the same treasury. It may be well to cite one of these transferrings of a point of law and a case from the Book to the Poem.⁴¹² In RB., VIII, 1146-52, we read

Suppose a man
 Having in view commission of a theft,
 Climbs the town-wall: 'tis for the theft he hangs,
 * * * * *
 Law remits whipping, due to who clomb wall
 Through bravery or wantonness alone,
 Just to dislodge a daw's nest, plant a flag.

This is, of course, but a vital, semi-humorous paraphrase of Arcangeli's words (B. 101):

"Thus if one wishing to commit theft, climb over the walls of the city, though he could commit that deed without the crime of crossing the wall, (which is a very grave crime), even then only a single penalty, namely that for theft, is inflicted, as the crime chiefly in mind."

Such examples are multiplied abundantly in the notes.

I find but one proof of the Poet's having traveled beyond the Book for legal information and this is in his finding in Farinacci the description of the torture of the vigil,⁵²⁶ which is mentioned but not described in the Book.

We have here an interesting example of how easily and thoroughly a master artist may gain sufficient technical lore, even in a difficult field, to astonish his critics. And this may perhaps offer a striking truth to those who guess at Shakespeare's occupations by his chance references to technical subjects, no matter how accurate they may be.

XIV. The Comparini-Franceschini Story as Found in the Book:

Practically the whole story of the Franceschini and Comparini, in all its detail, is likewise taken from the Book, where the Poet found it, not as a connected narrative, but usually in fragmentary fact. The three Italian pamphlets, especially the one not found in the Book, are more largely narrative. But the Poet does not follow any of these exclusively in creating his own story. It may be well to bring home this truth by giving here the connected story of Pompilia, with citation for each incident to the proper topical note.

Guido Franceschini, of a poor but noble family of Arezzo, had been dwelling in Rome for many years⁴³ as a dependent upon one of the cardinals.³⁹ When finally dropped from this service,⁴¹ he determined to provide for himself by making a marriage which would bring him a good dowry.⁷⁶ On the hint of a certain hairdresser,⁷⁸ and with the aid and counsel of his brother, Abate Paolo,⁵⁰ who was much more successfully established in the Church than himself, Guido made advances⁷⁶ for the hand and the dowry of a certain Francesca Pompilia, the thirteen-year-old daughter of Pietro and Violante Comparini.

The Comparini were of the well-to-do middle class⁶³ in Rome, with property of 10,000 to 12,000 scudi,⁶⁷ besides a certain inheritance left to them in entail, the income or usufruct⁶⁸ of which was their own in part,⁷⁰ and would be theirs absolutely in case they had a child. But they had been married many years and had reached middle life,⁶⁴ and still no child had been born. Certain financial reverses⁷² brought home to them bitterly the limit upon the usufruct, and they were so reduced that Pietro had to ask the Papal alms.⁷³ Under this difficulty Violante formed a plan to relieve their distresses. She made pretense of pregnancy¹⁰³ and then, by the connivance of the midwife, presented to her husband the girl babe of a common strumpet.¹⁰⁵ Her trick evidently succeeded, as Pietro believed the child was his own and enjoyed the considerable financial advantage arising therefrom. It was this child, now grown to the age of thirteen, who attracted the attention of the Franceschini brothers. For as she was sole heir of the property, and as the parents were well advanced in life, it must have seemed to them quite an eligible match.

When they had made advances to the Comparini, Violante's head⁷⁹ seems to have been turned immediately by the thought of her daughter marrying a nobleman.⁸⁰ She evidently added her insistence to that of the Franceschini, and they induced Pietro to sign a marriage contract, granting a dowry of 2,600 scudi.⁹¹ But when Pietro found out by inquiry that he had been deceived as to the rank and resources of his proposed son-in-law,⁸³ he refused to go on with the marriage ceremony.⁸⁴ At this juncture Violante, who was evidently determined to have her own way, with the assistance of Abate Paolo secretly⁸⁵ arranged the marriage. When Pietro heard of it he was very angry,⁸⁷ but was forced to acquiesce.⁸⁸ He went even further and agreed to turn over all his property to the management of the Franceschini brothers⁹⁰ on the condition that he and his wife should go to live with their son-in-law at Arezzo.⁹³ The whole household was accordingly transferred to Arezzo, probably in December, 1693.⁹⁴

Domestic peace was quickly broken in the Arezzo palace. Violante and Donna Beatrice Franceschini seem to have been at sword's

points.⁹⁸ The Comparini were likewise disillusioned by the pinching and penurious poverty which they were forced to share. Open quarrels soon broke out, and complaint was made to the Bishop of Arezzo.¹³⁹ There seems, in fact, to have been a bitter and scandalous turmoil during the four winter months. At last the Comparini decided to return to Rome,^{99 100} though the child-wife must of course remain behind with her husband.

No sooner had they reached Rome¹⁰¹ than they formed a scheme to recover not merely their own property, but the dowry of Francesca Pompilia. Violante, taking advantage of Jubilee¹⁰² and pricked by a conscience¹⁰¹ of a very elastic nature, confessed her fraud as regards the child's birth.¹⁰³ This was easily established by six witnesses.²⁶¹ Pietro accordingly brought suit for the cancellation of the dowry contract²⁶⁰ on the grounds that Pompilia was not his child, as he had supposed when he made the contract. To the infamy of such a trial the Comparini added still further by publishing and distributing broadcast certain libels about the Franceschini.¹⁰⁹ Even though the latter did win the suit,²⁶³ they were stamped with the indelible disgrace of Pompilia's birth. At this juncture, Guido, by way of retort against the Comparini, had Pompilia write the letter to Abate Paolo, which loads her parents with such an impossible burden of crime.¹¹²

Accordingly the wretched child-wife was left to the heartless fury of the husband of three times her own years, and of Donna Beatrice. Little, however, comes to light concerning her suffering during these years—only what is told in her affidavit.¹⁸

At the end of three years Guido seems to have begun more active plotting to rid himself of this wife whose infamy burned him to the very bone. But he would drive her into overt sin, if possible, that he might not forfeit his claims to her dowry.^{121 122} It is quite impossible to explain the facts of the Book, especially the love-letters,²³² except by such a scheme on the part of Guido; nor is the scheme so unnatural nor was it as demonic, judged by the morals and manners of Guido's class and time, as it seems in the opinion of the Poet. His plan seems to have been so to press cruelty and fear of death upon her that she would run away. And the sham correspondence carried on by Maria Margherita Contenti^{54 154} seems to indicate that Guido had even singled out Caponsacchi as of a disposition to be allured by such a perilous liaison. At any rate, he soon seems to have made show of a bitter jealousy of Caponsacchi.¹²⁸ The plot is easily explainable if we but think of the bitter slanders of the Comparini, of the manifest infamy of Pompilia's birth, and of the sordid, selfish nature of the Franceschini.

In these straits the wretched girl must have been in all but helpless terror, especially after such a scene as that following the evening at the

comedy, when Guido pointed a pistol at her and threatened her life.¹⁸² She had long before tried, and in vain, to find help in the Bishop¹⁸⁹ and in the Governor of Arezzo.¹⁸⁶ We can see how naturally they would have sided with the Franceschini in these circumstances.

Pompilia accordingly appealed to her confessor Romano,¹⁴⁴ entreating him to write to her parents for help; but no reply came to the letters (which were probably not written). Then she evidently turned to Canon Conti¹⁴⁵ and to Signor Guillichini,¹⁴⁶ both of them relatives of the Franceschini. Conti, who knew of Caponsacchi's proposed trip to Rome¹⁵³ and who knew his friend's character,⁸⁵ suggested that Pompilia seek his assistance. She did so, and though Caponsacchi first refused to have anything to do with such a perilous undertaking¹⁶⁰ he was at last induced to accompany her.¹⁷⁹ We have no definite testimony in the Book as to his former character,³² but there seem to be no grounds for rejecting his claim that he accompanied Pompilia out of Christian pity¹⁷⁹ and without the slightest intervention of criminal intent.

Circumstantial evidence, gathered from the details of the Book here and there, also indicates that Guido was aware of this plan and was gladly waiting its outcome.^{121 150} He plainly had nothing to fear from further disgrace, and he would thus rid himself of a loathed wife whom he had already found he could not divorce. We can hardly explain the intervention and later testimony of Maria Contenti in any other way.^{54 154}

Accordingly Canon Caponsacchi and Pompilia concerted their plan on the last Sunday evening of April in a conversation at the window of the Palace.¹⁸⁴ The wife left her husband's bed late at night,^{186 187} gathered together a few clothes, some trinkets and money,^{199 200} and made her escape at dawn,¹⁸⁸ April 29, 1697.¹⁸⁴ When she had reached the tavern outside the Porta San Clemente,¹⁹¹ she found Canon Caponsacchi awaiting her with a two-horse carriage.¹⁹² Guido claimed that they had the further assistance of Signor Guillichini,¹⁴⁶ who would have gone with Pompilia to Rome if it had not been for sickness. They entered the carriage and set off rapidly for Rome, traveling uninterrupted,²⁰³ according to their own statement,¹⁹⁴ until they reached Castelnuovo the following evening.^{211 212}

Guido having awakened late the next morning because of the effects of an opiate¹⁹⁷ administered by his wife, as he claimed, set out in pursuit, probably expecting to find his wife surrounded by such evidences of criminal liaison as would free him of her. But, owing to the rapidity and directness of their flight, he did not overtake them until they were forced by Pompilia's fatigue to halt.²¹⁸ When Guido reached Castelnuovo he found Caponsacchi in the inn-yard ordering out horses for the continuance of the journey.²¹⁹ The priest was armed with a

sword²²¹ and made a bold front, saying, "I am a gallant man and I have done what I have done to free your wife from the peril of death."²²⁰

Guido accordingly, instead of taking the immediate vengeance by force of arms which the unwritten law would probably have granted him,²²² called in the authorities and had the wife and the Canon arrested. When Pompilia was brought face to face with her husband in the upstairs room of this inn²¹⁶ she attacked him with a sword,²²⁷ which was snatched from her by a bystander. She then reproached him bitterly for his cruelties.²²⁸ But the couple were soon carried to the local prison,²⁵⁴ and were evidently there two days later according to Pompilia's letter in the last Summary of the Book. But within a few days they were carried on to Rome and placed in the New Prisons.²⁵⁵

A criminal trial for flight of the wife from home and for adultery²⁶⁹ was now begun in the Court of the Governor.²⁷⁰ As a part of it we have the interesting affidavits of Pompilia and Caponsacchi,^{18 34} speaking in their own defense. This trial must have continued throughout the summer of 1697, as the sentence of three years' banishment to Civita Vecchia²⁷¹ was not given against Caponsacchi until September. Pompilia in the meantime had been remanded from the prison to the Convent of the Scalette,²⁷⁶ but as it soon became evident that she was pregnant²⁸⁸ she was removed to the home of the Comparini on October 12, under security of 300 scudi to keep the said home as a prison.²⁸⁴

The plan of Franceschini had accordingly miscarried—his wife had left him, but he had not secured either divorce or dowry, nor had he placed her in such an evidently criminal light as would enable him to do so later. Still further, Pietro Comparini seems to have reawakened the suit for the recovery of dowry and to have instituted a suit for divorce in Pompilia's name on the ground of cruelty.²⁶⁶ When Guido had gone back home to Arezzo,²⁵⁶ Abate Paolo had to sustain the whole burden of the lawsuits. He tried appeal to the Pope in vain.^{280 281} At last, stinging with the disgrace of his family,³⁰⁵ he left Rome³⁰⁴ and disappeared from the story.

The Comparini, in the meantime, were again cherishing Signora Pompilia as their child in their home, and here she gave birth to a son on December 18,²⁹⁹ the legitimate heir of Guido Franceschini.³⁰⁰ The child was named Gaetano²⁰ and was then hidden away,³⁰⁹ probably to keep him from falling into Guido's hands.

Guido in his Arezzo home received news of the birth. It was his clue for action.³⁰⁷ He secured the assistance of four young laborers^{311 312} and armed them, and they proceeded to Rome, arriving on Christmas.³¹⁷ For a week they lay in wait at the deserted villa of Abate Paolo at Ponte Milvio.³¹⁸ Then, on the evening of January 2,³¹⁹ they proceeded to the Comparini home. Guido knocked and secured admission by

saying he had a letter from Caponsacchi.³²¹ Violante, who opened the door, was straightway slain,³²³ and the other two were cut down by the assassins,³²⁴⁻⁶ who then made their escape.³³⁰ As they had forgotten to secure a passport,³³⁷ they proceeded on foot toward Baccano³³⁹ and were overtaken³⁴⁰ by the police after a pursuit of nearly twenty miles.

When the neighborhood, aroused by the outcry of the Comparini,³³¹ had rushed in, they found Pietro and Violante dead, but Pompilia, though frightfully mangled,³²⁶ was still alive.³⁴⁸ In fact she lived four days longer³⁵⁰ and during this time made a profound impression upon the priests, physicians, and others who attended her death-bed, as is evident from their attestations.³⁵³ She died January 6.³⁵⁰

In the meantime, according to common custom, the bodies of the Comparini had been exposed to public view in the Church of San Lorenzo in Lucina⁵⁷ and large crowds of the idly curious had pressed in to see. The crime must have been the sensation of its day.

Then began the murder trial in the criminal courts,³⁶⁵ and it is this trial which occasioned the "old yellow book." It seems to have proceeded very rapidly, as contrasted with modern criminal procedure, as sentence was given February 18.³⁶⁵ And although a brief delay was secured on ground of Guido's clerical privilege,⁴² the sentence was finally executed, February 22, 1698.⁴³²

Such is the story of the Book, a sordid, cruel story, with many a glint of the human heart's worst hell, but it is likewise illumined with the heavenly light of those indisputable attestations of the bystanders at Pompilia's death-bed.

XV. Browning's Way of Using the Story:

This story, as will be seen in the topical notes, is gathered from all parts of the Book, and many of its incidents and motives are subject to dispute. By his plan, however, the Poet is able to take advantage of many of these variant versions in displaying the various characters of the speakers. Thus there is charge and denial in the Book of the fact that Caponsacchi had clandestinely visited Pompilia¹⁷⁰ in her home before the flight in April, 1697. The Poet's plan permits him to state the charge in the words of Guido and to deny it by those of Caponsacchi, and to turn the fact from side to side on the lips of the other speakers. There is no such question of fact in Pompilia's drawing the sword upon her husband at Castelnuovo.²²⁷ But around this undoubted fact are gathered the many interpretations of it which throw such strong light upon its spiritual meaning. These vary from the cynical sneer of a Tertium Quid to Pompilia's declaration that it was in obedience to the word of God, who was leading her; and they are crowned by the grave, earnest approval of the Pope.²²⁷ This play of

interpretation as to the motive of the obvious fact is one of the most striking features of *The Ring and the Book* as a work of art. An experienced newspaper man once called attention to the truth of this to life. In his labors as a reporter of news he had almost continually to face a difficulty in that each mind gives its own interpretation to the plainest ascertainable matter of fact and that the discovery of the truth from human testimony is thus rendered very precarious. The Poet has reproduced life in his Poem by this device, and it seems more like the oceanic, ever-varying surface of life than a mere picture or panorama of a certain phase of it.

In the presentation of his story the Poet is likewise true to the descriptive details given in the Book. Many incidents, of course, are presented by the Book without detail, and then it is necessary for the Poet to revitalize the incident by creating a vivid setting for it. We have, for example, very little account of the runaway journey of Pompilia and Caponsacchi from Arezzo to Rome, and he supplies this, especially in Caponsacchi's narrative, without in any way traversing the truth of his material. But Browning was quick to see and to incorporate even the slightest descriptive details of the Book into his Poem. We see this in the reference to the upstairs room at Castelnuovo,²¹⁶ to the terrace and the back door of the Franceschini palace,¹⁵⁸ to the knife with which the murder was committed,⁴¹⁴ to the Franceschini coat of arms,⁴⁷ and to Guido's secondary nobility.³⁸ This, however, is more extensively manifest in the Poet's careful adaptation of countless details of information connected with the case at one point or another. Wherever he found a trifling fact he gladly adopted it, frequently raising its significance very considerably in the story. It may be well to give here a considerable list of these petty details as a convincing illustration of his minute dealings with the Book. Such are the facts of Pietro's seeking of Papal alms,⁷³ Guido's falsification of his income,⁸² Pietro's refusal to proceed with the marriage,⁸⁴ his begging of traveling expenses from his son-in-law,⁹⁹ Violante's pretended prick of conscience,¹⁰¹ the six witnesses to Pompilia's birth,²⁰¹ Guido's pencil-tracing of the letter to Abate Paolo,¹¹⁴ instances of the parsimony of the Franceschini home,¹¹⁷⁻⁹ Pompilia's attempt to quiet her husband's jealousy,^{120-7 129} her first recourse to Conti¹⁴⁵ and Guillichini,¹⁴⁶ Caponsacchi's chance passing of the Franceschini palace,¹⁵² the Bishop's proposed departure from Arezzo,¹⁷⁶ the delay of two days in the plans for flight,¹⁸¹ the signal with the handkerchief,¹⁸³ the manner of leaving Arezzo,¹⁸⁷⁻⁹³ Caponsacchi's laic garb,²¹⁷ "the wicked-looking sword at side,"²²¹ Abate Paolo's consent to the removal of Pompilia from the Convent,²⁸⁸ the hiding away of her child,³⁰⁹ and her final prayer to the Virgin,³⁴⁹ the exposure of the corpses in San Lorenzo,⁵⁷ the death of Canon Conti,³⁶

and the swooning of Baldeschi under torture.³⁹⁰ Such details might be continued still further. Browning's mind was evidently filled with them and they slipped easily into their right places in his general scheme. He supplements these ascertained facts, but seldom contravenes them. This is the method of the careful and honest historian and is rarely found in the great artist to the extent we see it here. The Poet carries this principle of his art so far as to borrow in close paraphrase, we may almost say translation, the descriptive details as to the murder³¹⁷⁻³⁸ and those concerning the scene of execution,⁴³³⁻⁴⁷ as given in Book XII.

We find a significant example of his use of the petty detail of the Book in the characteristic sneer of Tertium Quid at the death of Police Captain Patrizi,³⁴⁶ who pursued and captured Guido. In the Pamphlet, p. 212, we read: "This arrest indeed cost the life of Patrizi, because having been overheated and wounded with a slight scratch, he died in a few days." Browning's version of this in his poem is as follows:

The only one i' the world that suffered aught
By the whole night's toil and trouble, flight and chase,
Was just the officer who took them, Head
O' the Public Force,—Patrizj, zealous soul,
Who, having but duty to sustain weak flesh,
Got heated, caught a fever and so died:
A warning to the over-vigilant,
—Virtue in a chafe should change her linen quick.

And the words of Tertium Quid just beyond this, lines 1416-24, are likewise adapted from the same Pamphlet.³⁴⁸

One more instance²⁷⁵ may be profitably given in Bottini's figure of the wine bush (RB., IX, 1545-1550):

I traverse Rome, feel thirsty, need a draught,
Look for a wine-shop, find it by the bough
Projecting as to say "Here wine is sold!"
So much I know,—"sold:" but what sort of wine?
* * * * *

That much must I discover by myself.

Compare with this the words of the second anonymous pamphlet, B. 180:

The title of that case was placed there just as a wine bush hangs outside the door of an inn, which very well shows that they sell wine there, but does not prove whether what they sell is good and salable and agreeable. Oh! by no means, etc.

It is such repeated use of even the trivial detail of his Book in the Poem that justifies the extended detailed study in the topical notes attached to this volume.

In spite of all this fidelity to fact, the poet does not find himself in a Saul's armor of literality. Like Shakespeare, like every great artist, he had the power to illuminate the mere matter of fact with profound significance and profound spiritual truth. Thus, behind the fact that Caponsacchi delayed two days after the first promise to carry Pompilia to Rome, the Poet sees indeed the excuse of the difficulty of getting a carriage,¹⁸¹ but he sees all the more clearly the profound change of heart of the man Caponsacchi from the fop to the saint. Pompilia's affidavit in the Book tells of her recourse to the Augustinian confessor Romano, and of its failure,¹⁴⁴ but this incident glows with deeper truth in the various versions of Other Half Rome, Pompilia, and the Pope. As a final example of the alchemizing art of the Poet over his material, I add the Book account of the incident of the comedy¹³¹ as found in Pompilia's words, which is to be placed side by side with the Poet's version on the lips of Caponsacchi:

His suspicion increased all the more because while we were in a great crowd at the play one evening, Canon Conti, * * * threw me some confetti. My husband, who was near me, took offense at it, not against Conti, but against Caponsacchi who was sitting by the side of the said Conti.

From this grew Caponsacchi's version (RB., VI, 393):

Well, after three or four years of this life,
 In prosecution of my calling, I
 Found myself at the theatre one night
 With a brother Canon, in a mood and mind
 Proper enough for the place, amused or no:
 When I saw enter, stand, and seat herself
 A lady, young, tall, beautiful, strange and sad.
 * * * I was still one stare,
 When—"Nay, I'll make her give you back your gaze"—
 Said Canon Conti; and at the word he tossed
 A paper-twist of comfits to her lap,
 And dodged and in a trice was at my back
 Nodding from over my shoulder. Then she turned,
 Looked our way, smiled the beautiful sad strange smile.
 "Is not she fair? * * *"
 "The fellow lurking there i' the black o' the box
 "Is Guido."

This account of the fact in the Poem was transferred to Caponsacchi's lips because it was, in the Poet's conception, the very turning-point in Caponsacchi's life, which stung him awake to all the latent good within him, while Pompilia was more fitly aroused by the dawning sense of motherhood. The play of interpretative power in the above example is but one of many possible illustrations of Browning's right of eminent domain over the field he had seized, and it is in such interpretation that his creative art rises in independence of the Book without disputing it.

XVI. The Environing Life Around the Central Tragedy:

Browning realized that the central life of the subject before him lay in the relationships of his three major characters, Guido, Pompilia, and Caponsacchi; but he also realized that around them was the environing life of Rome of the year 1698—an environment that controlled and forwarded the tragedy at every point. The Poet had frequently scrutinized past ages for such an atmosphere with close human interest, and he had embodied, as we have said above, many a result in his typical human figures of *Bells and Pomegranates*. He had, moreover, the strong and vital example of this feature in artistic plotting in the historical novel of the day. *Henry Esmond* and *Romola*, then but fresh from master pens, were convincing examples of the power of such a created world around the main human interest. It therefore became inevitable that Browning, instead of contracting his view to the intense play of his few personalities upon each other, as he did in his dramas and as is strikingly exemplified by *In a Balcony*, should have gone on to the portrayal of Roman life of a century and a half before. With his intimate knowledge of the history and customs of many preceding generations, he could do this with a fidelity and an accuracy which were at no point the result of such labor as Thackeray or George Eliot spent in getting themselves back into the former day. We should say, still further, that the Poet seems consciously to abandon studious historic accuracy in this respect and exercises the artist's right of eminent power.

In writing concerning this environment he does not present the life of the Rome of the late seventeenth century from its own standpoint of morals and religion. Worldliness in the church and the marriage of convenience, nay and even the marital harshness of Guido, would have been accepted as a matter of course in that day. The Pope's liberal theology and his criticism of the church are as anachronistic as Shakespeare's Roman bells. We doubt if Guido would have been seriously blamed by his own day, and it is not at all improbable that he would have escaped punishment if it had not been for the aggravating circumstances of the murder. But in his judgment of the case the Poet abandons at will the historic standard for what he considered to be the absolute standards in morals and religion. He became thus less true historically, but more true absolutely.

Browning's picture of the domestic and social environment of Pompilia has of course but fragmentary suggestion in the Book. But he could easily imagine the comfortable selfishness of the Comparini, which by force of contrast brought out all the more strongly Pompilia's early flower-like purity and her later saintly patience and fortitude. For the home life of the Franceschini palace, he went rather to his knowledge of the human heart, presenting all the petty meanness of a nobility

which has run to bitter dregs in its poverty. He took certain details from the affidavit of the servant,¹¹⁰ but he made comparatively scant use of this affidavit. Around these two selfish families we feel the presence of a Roman life, productive of countless more of the same types, and they form a heartless, hope-destroying barrier against the escape of Browning's Pompilia, driving her still more utterly to the patience and the faith of God's own saint.

XVII. The Church as an Environing Power:

A far more important feature, however, of that environing world, and almost the whole of it, was the great Roman Church of the day. It had received both Guido and Caponsacchi as sons; it had been present at every moment of Pompilia's career, as the outward guide of her deep, religious emotion; it had adjudged her flight from home and her husband's murderous vengeance. All of these cases, criminal and civil alike, had been in the ecclesiastical courts, as Rome lay entirely under the secular authority of the Pope. It was not a time of supreme worldly pride in the Roman Pontiffs, nor of worldly corruption. Pope Innocent XII had overthrown nepotism, and was himself a man of piety and charity. Yet the same great institution of the medieval centuries and the renaissance still rose as splendidly as its Saint Peter's, a fitting symbol of its strength, pride, and glory. Browning, however, was always more interested in men than in institutions, and was sure to illustrate institutions by men, rather than subserve men to institutions. Throughout the whole range of his work, he had probed with curious interest the many types of churchmanship: The Spanish monk, the Papal Legate in *A Soul's Tragedy*, Monsignor in *Pippa Passes*, and Bishop Blougram. But into *The Ring and the Book* he has gathered as much as in all other places put together. The churchman is as present in the Poem as he is on the streets of the Eternal City, not shrouded behind his uniform, but revealed in his life and purposes. Priestly types appear at every turning of the story and illustrate every throb of passion which animates the great whole. Abate Paolo, Caponsacchi, and Girolamo are priests, and Guido is attached to the service of a cardinal. In the speech of Caponsacchi we are shown his worldly-wise patron, his great-uncle, the Bishop of former days, Brother Clout and Father Slouch, Canon Conti, the Confessor Romano, the good Celestino, the ecclesiastical judges with their smirk at the "peccadillos incident to youth." Then there is the harder, self-seeking clergy of Guido's monologue, where clerical preferment becomes a gambler's chance, and where complaisance to the cardinal is an eighth virtue; his closing speech is addressed to Cardinal Acciajuoli and Abate Panciatichi, and is a bitter ripping up of secrets of the selfish society of which he

has been a part. The Pope himself turns grave as he considers the degenerate conduct of many of the sons of Mother Church. Browning has presented such a church, not in the spirit of satire or criticism, but with the intention of representing truly the hard environment which shut in Pompilia to the brutalities of her husband. The Poet was always afraid of the dominance of institutional religion at the expense of personal religion. He realized, not in religion alone, but in art and in all other inspirations, how easy it is for the soul to become satisfied with a form from which the spirit has fled. He feared a church that stood between a man and his God, and that formulated and fixed his belief. And here in *The Ring and the Book*, Browning presents such a church, with the same confidence in his fidelity to truth as he shows in his monk in the Spanish cloister and Johannes Agricola. From this church might come a Guido and a worldly Bishop of Arezzo, but from it also came Caponsacchi and Fra Celestino, and over it presided the grand old Pope.

The Pope is not merely the crown of the institutional church of his day, gathering within himself all that is best in it, but he is also the mouthpiece of Browning's own comment on the tragedy and of his own faith in spite of its horror. In the Book there occurs only the mere mention of him, in the manuscript letters.⁶² There is no proof that he took any personal interest in the story, nor even that he did anything else than deny Guido the protection of clerical privilege. The sentence against the murderers was by the court, and not by the Pope. The Pope merely took the negative attitude of non-interference. There is, of course, not the slightest hint of his character in the Book. Browning has gleaned from the Papal histories of the day the fact that he was a good old man, something of a reformer, self-denying in his private life, and lavish of alms. He has added to this not the characteristics of another Pope, Innocent XI, as is sometimes charged, but those of a typical wise old age, which has crowned a life of devotion to the good and true.

Browning had a very distinct faith as regards old age. It is not a time of decrepitude but of vision, a time of clear survey of life from a moment of peace at its close. In the Pope, Rabbi Ben Ezra, and John of *A Death in the Desert*, Browning has created three old men of this type, men who realize what old age should be; and all of them were created within a period of five years. We might add to their number the old priest in *Ivan Ivanovitch*. It is noteworthy that Browning makes all of these old men, to a certain extent, his own mouthpieces. They express the philosophy of life and the vision of God and His love, which is found everywhere throughout Browning, and is fundamental to his own personal religious philosophy. Every important doctrine of *Rabbi Ben Ezra* can be paralleled from the other poems of Browning.

The Pope likewise becomes the exponent of Browning's doctrine and of his personal attitude toward the actors in the poems. Here we have Browning's judgment of Pompilia and of Caponsacchi, of the Franceschini and the Comparini. It is Browning who grows sad at heart in blaming his whole world. We may add that Browning has even placed in the mouth of the Pope that apology for Euripides which is so directly a part of his own reverence for the great Greek tragedian, whom he glorified still further in the words of Balaustion. But whether the judgment is personal or dramatic, it undoubtedly greets us as a sane, strong, divine judgment to dispel the chaos of the previous clashing of opinion, and it is a triumph of art.

XVIII. The Law as an Environing Element:

The Church was one of the conditioning elements of the environment of the tragedy, but the law was almost equally important. And of the law Browning had ample opportunity to judge in the pages before him. He uses this material with strong, satiric scorn. He was evidently moved to indignation by the shrewd sophistries of the arguments in the case. Ideally the law stands for justice between man and man, but here it had become a cunning machine devised for defeating real equity and justice. His contempt and irony are poured full upon the "patent, truth-extracting process." His indignation was stirred against a class of men who had been in close contact with the tragedy without feeling the slightest sympathy for the sufferers. There is no ray of such feeling at any point in these arguments of the Book, though there is much rhetoric and indignation of a purely professional character. There are also flashes of the contemptuous deference to the legal opponent, which is one of the worst types of professional vanity. Yet, on the whole, the personal characters of all the lawyers of the Book are practically imperceptible behind the professional mask. Browning doubtless felt that they were far more distant from the truth of the case they were dealing with than were the gossips of the Roman streets, who were under mere chance prepossession. In presenting these two lawyers of the Poem, Browning attempts to reproduce by means of characteristic types this great fact of the law, which in the Book governs every phase of the Poet's material.

Browning's humor has admirably interpenetrated his conception of the first lawyer, as he reproduces him in the Poem, and has saved Arcangeli from utter remoteness from our human interest. Of course the whole idea of the birthday feast and of the paternal pride in the little boy is Browning's sheer invention, and redeems in part the vanity of Arcangeli. Browning has also amplified the pompous deference to the Pope. For practically all the rest of the monologue he has followed

the Book with minute fidelity to its letter rather than to its spirit; nor does he follow any one argument, but chooses indiscriminately from all parts of the Book. Every point of law found in the monologue is in the Book: such as the elaborate plea of *causa honoris*,³⁹⁹ and its efficacy in law, the rights of one offended in honor to kill after a lapse of time as well as immediately,⁴⁰⁵ the injury done to Guido's honor by the parents,⁴⁰¹ and all the aggravating circumstances of the murder.⁴⁰⁸⁻²⁰ Moreover, each matter of evidence in the monologue had been given the same bent in the Book. Every precedent cited—those of Dolabella, Leonardus,³⁹⁵ Farinacci,³⁸⁸ Saint Ambrose,³⁹⁴ Matthæus,³⁹⁶ Panimolle,³⁹⁷ Theodoric,³⁸⁴ Jerome,⁴⁷⁶ Gregory,⁴⁷⁷ Saint Bernard,⁴⁸⁰ Cyriacus,⁴⁹² Castrensis,³⁹⁸ Apostle Paul,³⁸³ and the strange one of Christ, who is made to say *honorem meum nemini dabo*,³⁹³ are in the Book. The Latin so abundantly used by the lawyer is a very close adaptation of definite passages of the Book.⁴⁶¹⁻⁵¹³ A total of 56 passages, including 814 Latin words, are taken with close accuracy from the Book, while only 31 words in 7 quotations⁵¹⁴ are taken from classic sources, mere scraps of the classics.

It can be seen by what has been said above that the detailed dependence of this monologue on the Book is very extensive, and in no part of the poem has Browning stayed closer to his source. This is probably one of the reasons of the comparative neglect of the monologue by readers. Yet I venture to assert that the reader who can and will read the Latin and its paraphrase as they come in the text, so that he may enjoy all the delightful innuendo of this paraphrase, will find abundant source of entertainment in the speech. It contains far less for the lover of beauty, or of splendid imagination, but in all the range of Browning's shrewd analyses of odd, twisted, or bad characters, such as Sludge and Prince Hohenstiel, none is really comparable with that of Arcangeli. The monologue is purely a mosaic, in which some very large and important pieces are reproduced with absolute accuracy; but there is genuine art in their arrangement for the purpose of reproducing the effect of these lawyers upon Browning's own mind, and they were close-joined by the durable cement of the Poet's irony and his laughter. Browning has also taken fully the opportunity offered him by the manuscript letter of Arcangeli which was bound into the Book. The Poet paraphrases this closely, though with a delicious touch of his own, in the letter of Book XII, 239-89;⁴⁵⁰ the latter half, of course, is purely the invention of Browning, with full sympathy for the rotund rascality of the writer.

In the monologue of Bottini, however, Browning is further away from both the letter and the spirit of the real Bottini. The Poet seems to have taken a distinctly hostile attitude toward this prosecutor of Guido, which mars the fairness of his judgment. Irony and scorn

saturate the introduction to the monologue in Book I. This anger of the Poet probably arose from Bottini's treatment of Pompilia. In the course of his arguments against Guido, the real Bottini makes many damaging admissions about her, which are not at all necessary on the face of the evidence, and seems to have been utterly without regard for her personal character. He makes admissions as regards the love-letters, which were surely false,²⁴⁷⁻⁵² as regards her showing herself at the window at a hiss of her lover,¹⁷³ as regards the use of the opiate,¹⁹⁶ and even offers the very ingenious theory to explain Venerino's testimony as to the kissing during the flight.²⁰⁹ In the Poem, however, such damaging admissions are extended over and beyond this, and touch the case at many other points—the clandestine meetings with Caponsacchi at Arezzo,^{170 174} Pompilia's solicitations of the Canon and others criminally,¹²⁸ Caponsacchi's kissing the unconscious Pompilia,²¹³ the receiving of clandestine visits from Caponsacchi after the return to Rome,²⁹³ and the lie in the very hour of death to save her paramour³⁶⁰ and to destroy her husband.³⁶¹ Such admissions are in fact a caricature¹⁹⁷ of Bottini as he was found in the Book, and the Poet evidently paints the portrait under the impulse of his prejudice against the arrogant professional pride and utter moral and religious obtuseness of Bottini. Perhaps it is only fair to add that it was not Bottini's professional business to defend Pompilia, but rather to attack Guido, and he bases his attack not upon the innocence of the victim, but upon the brutal and illegal manner of putting the vengeance into execution. And the court before which he was arguing was doubtless far more ready to follow such a line of argument, and to base judgment upon it, than to feel any sympathy such as Fra Celestino felt for the dying child-wife.

Along with the arrogant professional pride of the Bottini of the Poem, we have a scholarly pride which Browning has caused to influence very subtly the style and illustration of the monologue. The English is smoother and more harmonious, rising at times to real beauty. It is interlarded with classical quotations, there being 21⁵²⁰ such, as contrasted with 5⁵¹⁵⁻⁹ taken from the barbarous Latin of the Book. The Fisc also makes allusions and draws illustrations 33 times from Latin and Greek mythology, history, and literature. This is strictly a dramatic feature; for as Stopford Brooke has well pointed out, Browning is remarkable for the scarcity of such allusions, when compared with other poets.

Over the law, as over the gospel, the good Pope presides to save us from cynical skepticism for this human institution and to bring to a close the selfishness and harshness of the long conflict. And it is he who, according to Browning, saves Pompilia and Caponsacchi from the results of the conventional perversity and wrong-heartedness of this whole environing world of the Italy of 1698.

XIX. *The Characters as found in Book and Poem:*

The chief interest, however, for the ordinary reader will lie in Browning's method of dealing with the characters of the actors; the human types found in the Book and the Poem; for Browning is essentially a poet of human nature, and it is his men and women who fix the attention of the reader.*

I have already stated that thirty-three names are taken from the Poet's source-material—quite a number of these, of course, are mere names. The minor characters, wherever they are given real lines of characterization, are in general faithfully reproduced from the Book, except for somewhat of a favoring of Pompilia's friends at the expense of Guido's. Abate Paolo is the same cunning diplomat and manager;⁵⁰ Violante the same headstrong, disagreeable woman;⁵⁵ the tone of Fra Celestino's speech is certainly like that of his real affidavits.

The creation of the three major characters, however, presents a far more interesting and important problem; for in their relation with one another we find the true heart of the tragedy, and here it is that the independent creative mastery of the artist soars free from the trammel of fact to display the Poet's vision of truth. One of the chief interests in the Book, accordingly, is in its manifestation of the real prototypes of these three important personages in the Poem. For as ideal representations of the good and bad in human nature, they contain the best Browning has to utter upon the problem of life. The story was unimportant, so far as wordly consequences are concerned, and the characters have to supply its real import. No nation was awaiting the result of this tragedy, no public consequences of dominating importance were dependent thereupon. But the good in the suffering saint, Pompilia, and the soldier saint, Caponsacchi, in their active strife with the demonic in Franceschini, is a sufficient source of interest. God's hand is shown at enmity with the wrong of an evil man backed by an unideal conventional morality. And so, though the story is not of epic consequence, it is of profound importance to the spirit of man. In dealing with the play of these three most important characters, the Poet has increased very considerably the comparative importance of the Caponsacchi of the Book. We turn now to a somewhat more extended study of them. We may remark by way of caution that practically every statement in the Book as regards any of the three is biased—some of these statements are utterly false—and the student must not merely cite the words given, but like the judge must also weigh the evidence offered as to their characters.

* Rossetti Papers, p. 401, July 4, 1869: Browning talked about an article in *Temple Bar*, saying that he, as shown in *The Ring and the Book*, is an analyst, and not a creator, of character. This, Browning very truly says, is not applicable; because he has had to create, out of the mass of almost equally balanced evidence, the characters of the book as he conceives them, and it is only after that process that the analyzing method can come into play.



Portrait of Linfeltes Guido franceschini, il quale fu
Decapitato in Roma alli . . . febbraio 1698.

[Handwritten signature]



XX. *Count Guido Franceschini*:

We turn first to the consideration of Count Guido Franceschini. He is the most elaborately and skilfully drawn of all Browning's bad men, and they are many. In his earlier works the Poet shows something of the natural historian's interest in evil men—they are described and faithfully reproduced without comment or moralizing. *The Laboratory*, *The Confessional*, *Ottima and Sebald*, *A Soul's Tragedy*, *Instans Tyrannus*, and *Porphyria's Lover*, all present the criminal in this way. The Poet also dwells at times with curious analysis—we may almost say sophistry—upon the obliquely and erratically bad, as in *Sludge, the Medium*. Later on, however, the bad man took a definite place in the Poet's doctrine, both theological and philosophical. His earlier keen intellectual enjoyment in mere objective presentation, or subsequently in the analysis of the motive of a bad heart, gave way to a sense of its demonic power in antagonism against God and goodness. What is the meaning and result of such antagonism? Can the creature in sin defy its God? Or still more, if he do so, can the Creator for sin destroy His creature, made in His own image? Browning realized the significance of these questions. In their answer lay his very possibility of faith. Guido causes the Poet to search his own heart as thoughtfully as does the old Pope in the Poem. The bad man is himself an epitome of much of the deeper thought of any artist. His decadence, his mastery over the world, and the final nemesis which overtakes him draw largely from the poet's deepest insight into life.

Of all Browning's bad men, none can match Guido in sheer monstrous wickedness. His birth and education have associated him with the conventionally best of his day, while at heart he is of the worst. He is the degenerate son of an effete nobility, as bankrupt in humanity and sense of honor as in purse. He has inherited the position of gentleman, but bears none of the marks of noble birth. His very honor in birth and family is a mere marketable commodity. The strong, proud stock has run to its dregs. He is mean in personal appearance.⁴⁵ Brutality has banished courage, and self-interest has destroyed self-respect.⁴⁶ Poverty has served to accentuate all the latent evil of the race, and has stimulated the inordinate, wolfish rapacity which darkens Guido's conduct. His training has been in the worldly church,⁴² and he is a stone in her inordinate pride. (RB., VI, 313-316.) Yet no true religious motive actuates him. He clings to her in the hope of gain—of immunity in his plunderings—but turns upon her with cynical scorn when defeated in this hope. In his eyes there "is no such thing as faith extant." It is all lies, cunningly contrived for selfish gain. The privilege he claimed as noble and churchman alike is the privilege of sinning for gain's sake. This Guido was the natural result of the conventional society in which he moved. He observed its conventional morality and religion because

of the gain they bring or the lash they carry, and until the time of the catastrophe would be regarded as little worse than his neighbors.

His catastrophe began far back in his angry resentment at being poor. The privilege of his noble birth was checked by poverty. He would have plundered if he had been strong enough, but turned rather to a career of gain in the church. Defeated again and again in his ambition, he at last found himself, at the age of forty-six,⁴⁴ out of the "service of a certain Cardinal without a soldo."⁴¹ Then he wedded a child-wife for gain,⁷⁶ and in the excess of his greed defeated his own cunning plans;¹⁰⁸ for his cruelties to the Comparini brought their denial of Pompilia's rights as child.¹⁰³ In his resentment he wreaked brutal vengeance on the child-victim in his power. Yet there was more than defeated greed, as Browning sees it, in Guido's attitude toward his wife; there was a fierce hatred of her goodness as goodness. "Hate was the very truth of him." Her presence was a constant rebuke to the sin within him. Browning has suggested a situation somewhat similar to this in his *Instans Tyrannus*; for Pompilia's patient endurance aroused his resentment:

I advise—no one think to bear that look
Of steady wrong, endured as steadily,
* * * * *

How does it differ in aught, save degree,
From the terrible patience of God?

This devilish resentment against goodness intertwines with the brutality and greed of Guido's heart. No ray of kindness relieves his dark nature, no mother love nor brother love, no piety nor reverence.

For I find this black mark impinge the man,
That he believes in just the vile of life.

Now such utter depravity of heart, loathsome as it is, is made interesting by the presence of no mean intellectuality, chiefly a matter of preternatural cunning. Whatever our loathing of the man, we can not but be impressed with the mental vigor of his speeches, an impression somewhat different from that gained through the speeches of others concerning him. This it is that lends the necessary element of terrible power to what would otherwise be merely despicable. This intellectuality he shares with such villains as Iago, and Satan of *Paradise Lost*.

Yet the Poet feels that God leans in mercy over the life of Guido, bad as it is. He grants

Probation to the oppressor, could he know
The mercy of a minute's fiery purge!
The furnace-coals alike of public scorn,
Private remorse, heaped glowing on his head,
What if, * * *
The lost be saved even yet, so as by fire?

The very forgetfulness of Guido in the matter of passport, as the Pope interpreted it,³³⁷ was the providential Hand arresting Guido on the verge of eternal destruction; for he would have gone unprepared to the death his fellow assassins were plotting against him.³³⁸ But God gave him a moment's respite to confront his crime, to realize and hate himself. And it is the Pope's earnest wish that in the very suddenness of his fate

may the truth be flashed out by one blow,
And Guido see, one instant, and be saved.

That is, Guido with the fierce terrors of death staring him in the face may recognize his own evil, may see the supreme value of love, may recognize the love of God, and even the loving saintliness of his wife, and this, in Browning's idea, meant salvation. Such is the significance of the final cry for forgiveness:

Abate,—Cardinal,—Christ,—Maria,—God,—
Pompilia, will you let them murder me?

Browning, the lover of Pompilia, perhaps shared Caponsacchi's grim wish, lines 1901-54, as to the fate which should overtake Guido, but Browning, the seer and lover of man, would claim even a Guido for God. For in *Apparent Failure*, he says:

My own hope is, a sun will pierce
The thickest cloud earth ever stretched;
* * * * *

That what began best, can't end worst,
Nor what God blessed once, prove accurst.

Pompilia's words as regards him are blessing and not curse:

We shall not meet in this world nor the next,
But where will God be absent? In His face
Is light, but in His shadow healing too:
Let Guido touch the shadow and be healed!

Now the Guido of the Book is a far more commonplace villain than Browning has conceived him. His mean personal appearance⁴⁵ is taken directly from the Pamphlet. Unfortunately Guido's own testimony is omitted from the Book, except in a few fragments cited by his lawyers (pp. cxxvii-viii), and so we can not judge of his character from his own mouth. Yet there is much proof of the real character of the man in almost every argument of the Book, though at no point is there any clear final characterization of him. Brutality, craft, greed, are alike present; and the reply to the Anonymous Writer lays continual stress upon greed as a dominant passion.⁴⁶

Concerning Guido's earlier career the Book gives us no further information than that he spent thirty years at Rome in the service of a Cardinal; this has quickened Browning's imagination to add the narrative on the lips of Guido, which is so full of the self-seeking ecclesiastical life of the year 1698.³⁹ Under the stimulus of the crafty wits of his

brother Paolo,⁵⁰ he played for the hand of a wealthy child-wife,⁷⁶ a common practice in the society he frequented. His duping of the self-seeking Comparini⁸² would have been considered a case of Armenian meeting Portuguese. Not till he began his abuse of Pompilia did he disclose the rough brutality of his nature. Of these cruelties^{111 122 132-4} there is abundant evidence in the Book. In them he was encouraged by his mother's example,⁴⁹ if we may believe the affidavit of the maid Angelica.¹⁰⁰ Yet he was evidently able to hold his own in Arezzo by reason of the rank of his family; and he had the countenance of both the Governor¹³⁵ and the Bishop.¹³⁹ This is easily explained if we but remember that in Italian society the husband's right over the wife is almost undisputed, and that there were only the complaints of a strange child-wife from Rome against the word of a family of recognized rank. Guido's deadly hatred was the normal effect of the disclosure of Pompilia's disgraceful birth and this was accentuated by the threatened loss of the dowry.⁴⁶ Probably his friends sympathized in this hatred. How then should he get rid of her? Divorce was impossible save on the grounds of adultery; so adultery, either real or feigned, must be proved against his wife. He doubtless felt that he could by giving opportunity entice her into an intrigue. Even such a riddance of her could add little to the chagrin and disgrace he already suffered. His cruelties were partly brutality, partly craft—meant to drive her to flight. The interposition of the maid Maria Margerita^{54 154} was almost undoubtedly at Guido's instigation. The letters she bore back and forth must have been the husband's forgeries, through which he hoped to drive Pompilia and Caponsacchi together.¹⁶⁹ There is no other reasonable explanation of the facts of the Book. The trickery of Guido is further proved by the pretended love-letters,²³² for the husband asserts that these were a genuine correspondence from a flirtation in Arezzo. No one can read them now and believe them to be of Pompilia's composition. This is made the more probable when we see that he practically forged the letter to Abate Paolo.¹¹² The very fact that this packet of love-letters was all ready for the precipitate departure of Guido in pursuit of the fugitives indicates that he was deep in his plots before the flight. The false charge concerning the sleeping potion¹⁹⁶ confirms still further the belief in his plot. The only point at which his cunning seemed to have failed was in that Pompilia and Caponsacchi kept themselves pure in their perilous flight.

We see, therefore, that brutal selfishness softening itself by an intricate cunning was the character of the real Guido. Intrigue and falsehood were his favorite weapons; when they were finally broken, the brutal element in his nature drove him on to a cruel murder. Even then, his cunning, his recognized rights as a husband, and the prestige of his family in Arezzo would have set him free in the Tuscan courts.²⁰⁴

But his plea that he was a wronged husband failed of proof in Rome, and, perhaps to the surprise of many, he paid the penalty of his crime.

Browning seems to have realized fairly and fully this real Guido Franceschini. He also realized that in his own day Guido had many defenders and that his cunning had done much to baffle those who would judge him. He accordingly reproduced this very effect in the Poem, until not a few persons when they have finished his first monologue are inclined to believe his plea. He baffles and wins the book-spectator as he baffled and won those actually around him. This is a marvelous achievement in character delineation.

Yet in the end the villainy of Guido becomes unmistakable long before he shrieks for the forgiveness of Pompilia. And Browning has made him his fullest and most significant example of evil in man. To do this he of course has had to go on beyond the limitations of the Book-character. He must raise Guido above the commonplace before he is fitted for poetic treatment. The dangerous and self-possessed cunning, the intellectual vigor, the cynical lack of faith in good and aversion thereto have been added by the Poet. To use Shelley's dictum in his Introduction to the Cenci, he has increased the *ideal* depravity of the character. Yet in thus darkening the motive passion and personal attitude of Guido, he has not added a single item to Guido's chicanery and crime. We know from the Book that Guido was bad and see the frightful crimes that gather to his charge, and yet we do not see Guido in the Book until the artist intervenes. Fra Lippo Lippi's words are apropos of this power of the artist:

We're made so that we love
 First when we see them painted, things we've passed
 Perhaps a hundred times nor care to see ;
 And so they are better, painted—better to us,
 * * * * *
 * * * Art was given for that ;
 God uses us to help each other so,
 Lending our minds out. Have you noticed, now,
 Your cullion's hanging face? A bit of chalk,
 And trust me but you should, though !

We see, therefore, that it is not the fact of Guido's career as the poet drew it from the Book, but the interpretation of the meaning, power, and destiny of evil as Browning found them for himself, which makes Guido the most significant villain in English poetry since the days of Shakespeare; and while the fact of Guido's execution was a matter of history, the inevitable nemesis of ruin which grew out of Guido's long career of subtle selfishness found its origin in the insight of the poet. The very fact that he is not the villain at war with society, but is the semi-respectable ultimate of certain conventional phases of selfishness, makes him all the more important in showing what Browning regarded as real moral evil.

Behind Guido, "midmost blot of black," are discernible the rest of that dire family as a fitting environment—"the fox-faced, horrible priest," Paolo; "hybrid" Girolamo, "part violence, part craft"; and

The gaunt grey nightmare in the furthest smoke,
The hag that gave these three abortions birth,
The unmotherly mother and unwomanly woman.

All these are in the Book, and we find the accusation of craft and trickery against the first,⁵⁰ of lust and brutality against the second,⁵¹⁻² and of miserly cruelty against the mother.⁴⁹ Yet the lurid, hellish tints, the deepest shadows, are of Browning's imagining and they are partial explanation to him of Guido's own character. They have fostered and forwarded all that is worst in him. To them all the Pope gives his scathing word of denunciation, as well as to the hard world of Arezzo behind them—the Governor, the Bishop, the Confessor, and the cutthroat assassins.

XXI. Francesca Pompilia Franceschini:

Over against this Guido, with whom selfish worldliness has united her, lies the dying child-wife, Pompilia. The four years of cruel antagonism between her good and his evil have closed in the triumph of that public death-bed. Fra Celestino's testimony bears ample evidence to the saintly spirit of her closing days.³⁵³ The strife had not been one of mere brute power, but of spirit. The evil in Guido had loathed the good in his wife and had sought not merely to maltreat her, but to destroy her soul.¹²¹ This passion became almost as strong as his greed.⁴⁶ The good in her, on the other hand, shrank in terror from his presence. She was to conquer by that hardest of all conquests, through suffering. When Guido had done his worst to her, he had but destroyed her body which he had ruined. Her spirit rose triumphant at the close of her short life. "Everywhere," says the old Pope,

I see in the world the intellect of man,
That sword, the energy his subtle spear,
The knowledge which defends him like a shield—
Everywhere; but they make not up, I think,
The marvel of a soul like thine, earth's flower,
She holds up to the softened gaze of God!
It was not given Pompilia to know much,
Speak much, to write a book, to move mankind,

* * * * *

Yet if in purity and patience, if
In faith held fast respite the plucking fiend,

* * * * *

If there be any virtue, any praise,—
Then will this woman-child have proved * * *
Just the one prize vouchsafed unworthy me.



Browning's art often lingered over the creation of women, and Colombe and Balaustion are proud marks of this loyalty to them. He had also sketched the woman-victim in *My Last Duchess*, and elaborated her figure in *The Flight of the Duchess*. But both of these were high-born ladies, of sweet, sunshiny natures, far removed in social rank and disposition from Pompilia; and in neither of them is a stronger womanhood developed through affliction. Mildred also is a victim, though stained with sin; but she is too weak to save herself or her lover, and we feel pity, not reverence, for her. In Pompilia, Browning has gathered what seemed to him some of the highest womanly qualities, spiritual insight rather than mere intellectuality, fortitude in suffering rather than energy in antagonism, faith in God, love of her child, and an ignoring rather than an ignorance of sin. She had neither genius nor executive energy, nor even simple joyousness. Yet Browning felt that the spiritual element latent within her had that power of true benefaction which is the mark of saintliness. These are the accepted characteristics of the Virgin Mary, and as such she seems to have appeared to Caponsacchi. More than once he speaks of her as the Madonna and, as the Poet portrays her, she has much in common with the mother of Christ, as a type of womanhood. We may also note that this may have suggested to the Poet her thought of the immaculate conception of her babe,²² when she shudders to think of Guido as its father. But there is another influence in the creation of this ideal character beside that of the Madonna, it was the Madonna of his home, the mother of his own child, whose spiritual nature was as noteworthy as her intellect. And before this spiritual nature the Poet bowed in humble reverence. One of his friends (Scribner's Monthly, December, 1870) tells of his saying: "That he did not feel worthy to unloose her shoe-latchets, much less call her his own." Mrs. Orr (Life, p. 409) says still further:

Mrs. Browning's spiritual presence was more than a presiding memory in the heart. I am convinced that it entered largely into the conception of Pompilia.

It takes, however, both the throbbing humanity of Balaustion and the saintly glory of Pompilia to express fully the nature of Elizabeth Barrett Browning as she appeared to her husband.

Browning's artistic skill is well exemplified in the way he communicates to his readers a feeling for Pompilia's beauty of face.

A lovelier face is not in Rome.

That she was in fact beautiful is strongly suggested by the word of the Book, though little definite notion of this beauty is there given. But

Browning evidently became a worshiper of this sad, strange, beautiful face which haunted his imagination;

The same great, grave, grievful air
As stands i' the dusk, on altar that I know,
Left alone with one moonbeam in her cell,
Our Lady of all the Sorrows.

She is the "lily-thing to frighten at a bruise." The Poet over and over again thrills his reader with his own reverent sense of this beauty, not by describing his heroine, but by emphasizing the effect of a spiritual radiance which seems to emanate from her face. It was this face which converted the whole life of Caponsacchi, and it was this face which Guido loathed with a deadly hatred and which he cut to pieces. That Browning had marked skill in describing mere beauty of face is seen in his little poem, *A Face*, suggested to him by his girl friend Emily Augusta Patmore. Yet in his mature poetry he seldom describes his favorite heroines. The personality in the face rather than the beauty of feature is his endowment for Pippa, Colombe, Constance, the Duchess, Balaustion, and the dream-wife of *By the Fireside*. And Pompilia's spirit-beauty illumines the darkness of the whole somber plot.

This child-wife of Guido is indeed strong in her faith, even beyond the natural probabilities of her years and surroundings. Yet Browning has declared, "She is just as I found her in the Book." * This assertion seems to be based on the strong impression made upon the Poet by the sworn evidence of Fra Celestino and the others who ministered to her while dying, and the reader of this introduction should here insert the translation of it (pp. 69-73). Elsewhere in the Book such a character for the real Pompilia is hard to find. She was undoubtedly of vile parentage.¹⁰⁵ In the legal arguments her character and motives are dragged through the mire by the sophistries and jargonings of the lawyers, and just such incriminating explanations and acknowledgments are made as anger the reader of the monologue of Bottini. Even Guido's accusers speak of her merely as "the unfortunate child" and the "wretched girl." Some of the witnesses show pity for her suffering, but not even the sworn testimony of Caponsacchi³⁴ displays any recognition of her character as it finally evidenced itself in the hour of her death. Her own affidavit¹⁸ shows simplicity and innocent suffering, but gives no hint of her more striking aspects of character; it has no word concerning her faith in God, her thought of her child, nor of any personal feeling toward Caponsacchi. Almost the sole fact-basis for Browning's conception of her character lies in the sworn testimony of

* "I asked him if it did not make him very happy to have created such a woman as Pompilia; and he said, 'I assure you I found her in the book just as she speaks and acts in my poem.' There was that in his tone that made it evident Caponsacchi had a rival lover, without blame." Rev. John W. Chadwick in *The Christian Register*, Jan. 19, 1888.

Fra Celestino and his associates,³⁵³ who were her spiritual guides in death. No one can read these without an absolute conviction of her saintly purity and patience. Those men of long experience who surrounded her death-bed were deeply moved by her innocence, her tender forgiveness of those who wronged her, and her faith in God. Yet elsewhere in the Book even this testimony is distorted and ridiculed by Guido's lawyers.³⁵³

To this highest Pompilia of the Book Browning has added greatly—in fact he has added the important features of her characterization without transgressing the definite limits of fact. In the Book there is not a hint of Pompilia's sense of motherhood,²¹ which according to the Poet was the real motive of Pompilia's flight from Arezzo and was the quickener of her new trust in God, that came with the impulse to save her babe. In her monologue this sense of motherhood is one of the tenderest human traits of Pompilia as her motherly faith and motherly solicitude dwell on the thought of the little Gaetano.²⁰ The evidence we have as to the beautiful motherliness of Mrs. Browning makes us look to her as the source of this new trait in Pompilia's character. The Poet's belief in the privilege and beauty of motherhood as seen in Pompilia should be studied in the light of the Priest's words thereon in *Ivan Ivanovitch*. No more sensitive and spiritual conception of motherhood in its deeper experiences can be found in English poetry.

Another very important addition to the Pompilia of the Book is her love for Caponsacchi. In the Book she merely turns to him as a rescuer from her desperate plight. Here, as often elsewhere, Browning defies the merely conventional rightness of appearances. The fact of her flight from home in company with a young priest seemed compromising enough to the lawyers in the case. The prosecution against Guido even acknowledged that Pompilia may have made love to Caponsacchi for the sake of extricating herself from deadly peril at the hands of her husband. Yet, in spite of the accusations and inferences of the lawyers, aside from certain forged testimony, there is no evidence in the Book of any love between Pompilia and Caponsacchi.¹⁵⁰ Browning might have taken advantage of this fact and have represented them as victim and rescuer with no other bond between them than this which had risen by chance. It would have made an easier case to defend in the eye of the world. Browning, however, was far more apt to seek out difficulties of this kind than to avoid them. He knew of the presence in this world of a love that is lust, and such love was repeatedly charged against Pompilia by Guido's defenders. Why, then, did he not deny love in them? Nowhere does he show himself more daringly creative than in acknowledging on the lips of both Pompilia and Caponsacchi the presence of love. He could do this because he recognized a higher spiritual love, independent of the feeding passion of the body—

a love which is worship of the good and heavenly and ideal as embodied in man or woman, a love which is a real yearning up to God. And herein, he has humanized the saintliness of his two ideal personages.

Such "love is best"; such love is the "prize of life"; "the true end" for which we live is in "this love way with some other soul to mingle." With this conception of the purifying and ennobling nature of love, Browning need have no fear of any damaging effect of such an admission. It would rather be natural in his opinion that two noble souls, even in such a dark hour, should recognize each other instinctively and yearn toward each other. The conventional world around them would have sneered at their love as being only a thin veil of lust; but Browning felt in it a crowning glory to his soldier-saint Caponsacchi and his suffering saint Pompilia. Such a love looked far beyond the ordinances of man in conventional marriage.

With gold so much,—birth, power, repute so much,
Or beauty, youth so much, in lack of these!

When Caponsacchi came in answer to her prayer for help, and when she saw in him "God's hand visibly at strife" with evil, her woman's love went out to him as the purest and best of men. He had saved not merely her body but her soul, which in its respite from suffering had seen God and had risen to a higher law.

Through such souls alone
God stooping shows sufficient of His light
For us i' the dark to rise by. And I rise.

This presentation of a purely spiritual affection would have been impossible to an Elizabethan and would have been conceived only by a very high-minded and pure worshiper of woman.

In the hour of her death, Pompilia dwells not upon the suffering and the evil of the past, but upon the three great spiritual blessings of her closing life: "Her faith in God, held fast despite the plucking fiend," the love for her friend and helper, and her mother love. On these three rests her peace in death; and of these three only the first is brought out in the Book.

The consideration of Browning's Pompilia in the light of the Book would be incomplete unless mention were made still further of Browning's fidelity to truth in giving the apparently incriminating details as he found them in the documents before him. The Poet was too confident of her character to court concealment. Her single flash of action in the sword flourish against Guido at Castelnuovo is frankly vindicated by the Pope, lines 1072-85.²²⁷ No more damaging piece of evidence was found against her than what Guido's lawyers triumphantly brand "the lie about the arrival at Castelnuovo." Pompilia asserted that she and Caponsacchi had reached the inn of Castelnuovo at dawn,²¹²

only an hour before her husband overtook them; while Caponsacchi agrees with all other witnesses in saying that they had arrived in the evening and had spent the night there. To remove the dangerous implication of this apparent falsehood the lawyers against Guido claimed that she had merely lied for policy's sake, and that no vice had been concealed behind the lie. Browning's explanation rests in the fact that she had swooned in the evening light and had remained unconscious with fatigue through the long hours which had followed.^{212 213} The driver's accusation that the fugitive couple had kissed during the journey is likewise stated and met. Browning was willing thus to state even the most damaging evidence of the Book.

We must say, in conclusion, that Browning has been far too modest in his claim that he has presented Pompilia as he found her. Her story is indeed retold much as it had been in the Book; her sufferings are the same, her patience even unto death is the same. But even the hard, cruel facts are softened by passing through her soul. As she says:

Being right now, I am happy and color things.
Yes, everybody that leaves life sees all
Softened and bettered.

Her own sinful mother's life,¹⁰⁵ Violante's trickery,⁶⁵ and the prospect of her babe left alone, are seen gently. The real glory of Pompilia's character has been created by the Poet in expanding the partial truth of fact as he found it into one of the most masterly portraits of the suffering saint in all literature.

With her parents Browning has by no means taken the liberties he uses with the Franceschini. Their conduct throughout the case, as presented in the Poem, is true even in the minutest details of fact. They are thoroughly bourgeois.⁶³ Pietro's self-indulgence⁷¹ and his frequenting of taverns⁹⁷ are facts of the Book, and the Violante of fact has all of the disagreeable traits presented by Browning.⁶⁵ The anonymous pamphleteer speaks of her pride and calls her a "very shrewd woman, and of great loquacity"; easily moved by the thought of a grand alliance for her daughter, and determined to have her own way, even by means of a secret marriage,⁸⁵ and full of cajolery afterward.⁸⁸ The Governor of Arezzo also says that "she presumed to domineer over the house, and to keep the keys of everything."⁹⁶ Rome's gossip might mouth her reputation and do it little harm. Pompilia seems as utterly unrelated to them in character as in body; her home environment as a whole was a foil rather than a cause of her goodness. And we may say parenthetically here that Browning is so thoroughly a believer in the independent power of human will to triumph over heredity and environment that the later nineteenth century literature on this subject hardly affects him at all. Such a late study as *Halbert and Hob* is strikingly unlike Browning's usual attitude in this respect.

XXII. Canon Giuseppe Maria Caponsacchi:

In the portrait of Caponsacchi, the third person of this central group, Browning has been still more daringly and splendidly inventive beyond the fact of his material. The real Caponsacchi's relation to Pompilia had been confined almost solely to the crisis of her trouble. Browning saw, however, in the mere hints of courage given in the Book the possibility of an ideal heroism to be placed over against the ideal villainy of Guido. Caponsacchi was twenty-four years old at the time,²⁶ a nobleman, and a subdeacon in the church of the Pieve of Arezzo.²⁷ Pompilia tells us that her husband became jealous of the young man because he had stopped beneath her windows to talk with certain young hussies of the city.³² This seems the sole basis for the frivolous flirtation of Caponsacchi, as Browning has conceived it. Guido took further umbrage because Caponsacchi was in the habit of passing their house,¹²⁸ and he flew into a murderous rage after the incident of the comedy told by Caponsacchi in his monologue.¹³² It seems not at all improbable that his jealousy was feigned as part of the elaborately cunning scheme of Guido to drive his wife into a criminal intrigue with the young Priest.^{121 150} The reader may interpret the husband's choice of Caponsacchi for a part in such a scheme as indicating that the priest was originally a proper candidate for the intrigue. When the torture became too hard to bear, Pompilia turned at last to Caponsacchi¹⁴⁹—after seeking aid elsewhere in vain¹⁴⁵—because she had heard that “he was a resolute man.” Canon Conti, according to the Italian pamphlet, had suggested him to her³⁵ and says of his friend that “his spirit had stood every test.”²⁸ There are other hints of Caponsacchi's courage. The very act of flight with Pompilia might well make a brave man shrink as he did, when he said at first that he was unwilling to have anything to do with such an affair.^{160 179} “Yet at last the impulse of charity and pity prevailed upon him to free this innocent woman from death.”¹⁸⁰ And when Guido overtook the fugitives at Castelnuovo, and “found Caponsacchi urging that the horses be harnessed for continuing the journey,”²¹⁹ the latter faced him with the words:²²⁰ “I am a gallant man, and what I have done I have done to save your wife from death.” It is only fair to say that Guido's lawyers recognized this courage of the man as mere criminal daring and call him dare-devil²⁹ (*scapezzacollo*). Arcangeli also speaks of him as the “terrible priest,” and Spreti denominates him as “a young man, brave and forceful, provided with arms and accustomed to sin, and, what is more, both prompt and ready to resist.” There can be little doubt that he was a man of force and spirit. His own affidavit³⁴ has a manly ring, though not rising to any heroic pitch.

Browning might have accepted such a Caponsacchi as he was and have given him a merely incidental and external relationship to the

tragedy.¹⁸⁰ His art was deeper and wiser than this. He created instead a soldier-saint, a true Christian hero, as a foil to Franceschini. Caponsacchi has become the most elaborate and the most interesting of Browning's pictures of noble manhood. He differs decidedly from the earlier types of Browning's heroes, such as Paracelsus and Luria. They were men devoted to a great idea, and their heroism lay in their integrity and passionate devotion thereto. Caponsacchi's devotion, however, is to no such idea, but to a woman of flesh and blood. Years before, in Valence and Berthold, the Poet had vied with himself to create a man worthy of his Colombe. Still other types of hero appear in Pheidippides and Herve Riel. None of these, however, are at all comparable with Caponsacchi. I like to think that, as the Pope represents the graver, wiser, and more judicial attitude of Browning's mind toward the tragedy, so Caponsacchi represents the passionate, impulsive side of his nature—his indignant partisanship therein, just what Browning would have felt at twenty-five—what he did feel in *The Glove* and *The Flight of the Duchess*.

Without any assistance from the Book, Browning has imagined what lay in the years previous to this splendid outburst of manhood. The hero was born into the same social and religious environment as Guido, and early turned to a worldly career in the church. A worldly churchmanship can hardly retain him as its own when the innate sincerity of his unspoiled nature faces corrupt ecclesiastical practice. But once the vow passed, he seems to be slipping acquiescingly into a place in the ranks of a pleasure-loving, courtly clergy. He is a graceful and adept conformist to the customs around him. He practices poetry in a Marinisque Adoniad, finds diversion in *Lightskirts*³³ at the theater, is enviably popular with the fine ladies of the city, and can digest without a grimace the archbishop's jokes. The finer nature, which had shrunk awe-struck at the strictness of the vow of the renunciation of the world, was vanishing in the "fribble, fop, and coxcomb." Then suddenly he was brought face to face with the

lady, young, tall, beautiful, strange and sad.
* * * * *

That night and next day did the gaze endure,
Burnt to my brain, as sunbeam thro' shut eyes,
And not once changed the beautiful sad strange smile.

Caponsacchi "bowed, was blessed by the revelation of Pompilia"—from that hour he was a changed man.

Browning's purpose evidently was to make Caponsacchi no mere impersonal helper in the flight of the wife from her husband; but in that event to bring him also to the crisis in his life, to the moment of the making of the Christian hero out of the conventional fop. Browning liked to conceive of his characters in their earnest crises, as at such times

the whole latent character would declare itself. His words in *Cristina* on this subject are too well known to need quotation. The young priest "was named and known by that moment's feat, there took his station and degree." The conventional world around him became irksome, a better taste and a truer religion found birth with his love. He says:

my life
Had shaken under me,—broke short indeed
And showed the gap 'twixt what is, what should be,—
And into what abysm the soul may slip.

At the second meeting with that "great, grave, grievful face," his call to duty came, a hard duty, demanding the rise of the true man within him. Browning ignores the word of the Book here, which says that he at first refused to have anything to do with such a questionable and dangerous undertaking.¹⁷⁹ Caponsacchi in the Poem instantly accepts this new duty of self-sacrifice, because he has been changed to a nobler self by the look of the lady. The spirit of self-sacrificial love, which is the essence of Christianity, became the living motive of Caponsacchi, and we feel that Browning would assert that in the crisis he has risen to real Christian heroism.¹⁷⁹

Now all of this element is added by the creative instinct of Browning. We have little evidence in the Book that the flight with Pompilia had been more than a superficial adventure to the real Caponsacchi. His rise to the noble attitude of his later manhood is as much the creation of the Poet as is the early worldly masquerade before his meeting with Pompilia.

It seems not improbable that the legend and character of St. George of Merry England may have had much to do with the Poet's ideal of his soldier-saint, just as the Madonna had governed the ideal of Pompilia. Browning had doubtless seen Vasari's fine *St. George Slaying the Dragon*, which stands as the altarpiece in Caponsacchi's church. It is no mere chance that the Poet changed the date of Pompilia's rescue¹⁸⁴ from April 29 to April 23, St. George's day. (RB., VI, 1111.) And the rescue of the maiden who lay at the mercy of the hideous cruelty of the dragon bears a striking analogy to the story which the Poet had found in this old volume. He has also compared this rescue with the story of Theseus and Ariadne—the St. George legend of ancient Greece. The Poet, moreover, has made reference to Caponsacchi as a St. George five times in *The Ring and the Book*.²⁸

Browning has not merely added the conversion of the worldly Caponsacchi to the higher possibilities of his spiritual nature, but he has also added the deeply passionate yet profoundly reverential love of Caponsacchi for Pompilia. The addition of this love-element to the character of Pompilia has been mentioned, but something must be added here. In both of them love was the occasion of a spiritual revolution. In Pompilia's eyes he had been God's saving arm, a strong man full of pity

to her who had been accustomed to the selfishness or harshness of men. To him she had been a revelation of God dwelling in woman as purity, long-suffering, and godliness: an embodied Madonna, Our Lady of Sorrows. She challenged his worship in the most profound religious sense, rather than in the conventional, sentimental hyperbole of romantic poetry. He dwells on no pretty graces nor mannerisms, but accepts his miracle of the revelation of the Divine motherhood, self-authorized. She is the

snow-white soul that angels fear to take
Untenderly * * *

The glory of life, the beauty of the world,
The splendor of heaven.

Wordsworth has well described such a love :

Love that adores, but on the knees of prayer,
By heaven inspired; that frees from chains the soul,
Lifted, in union with the purest, best,
Of earth-born passions, on the wings of praise
Bearing a tribute to the Almighty's Throne.

Browning might have given such an other-worldly feeling to this bond of love as to have greatly reduced our interest. Such is the devotion of the confessor, Fra Celestino.³⁵³ This would have been the easier and more prudent way of dealing with two attractive young persons in so dangerous a situation. He prefers, however, to make each heart stir with an earnest personal passion for the other. In Pompilia it is a serene feeling, which rests purely by the side of her mother love and her faith in God. In Caponsacchi it is an overmastering flood of devotion to her service and of indignation against those who have wronged her. In each case it is the earthly crown of a true manhood and womanhood, coupled with a sincere devotion to God. In Caponsacchi it all but spoils his case, giving some ground for the accusation that "he loved the lady as they called love." Browning, however, has at no point in his poetry shown more splendidly the utter independence of real passionate love from "love as the world calls love," of Ottima and Sebald.

The Caponsacchi as thus conceived is worthy of his important place at the heart of Browning's masterpiece and is as great a creation as any in the whole range of Browning's poetic world.

XXIII. Browning's Independence in Character Creation:

In the consideration of these three figures we find the masterly creative freedom of Browning as he rises above his material. The Book gives but confusedly and imperfectly these characters. Guido rests under harsh charges in the Book, but extenuating pleas are made in his behalf. The facts of Pompilia's life are discernible in the Book, but her character is but mistily and confusedly presented. Caponsacchi's

fortitude is plain, but it is charged with being the fortitude of daredeviltry. One of Browning's chief problems, as a student of truth, was to bring order out of this chaos of charge and countercharge. But as an artist he had the far more important problem of raising the three to the province of art, vitalizing and idealizing these characters till, laying aside their commonplaceness, they would stand for the Poet's master conceptions of human nature, his attitude toward conventional society, his faith in God. Certainly in this part of the Poem the restraining leash of fidelity to truth is no hindrance to his poetic flight, and herein we get the unique, personal element of power which every great artist must contribute to the materials he works upon before they become vitally his own in art.

XXIV. *The Final Significance of this Source-study:*

All that has been said above throws light on the whole problem of the creative artist's relationship to his material. Nor will it do for one to accept or reject certain guiding principles on mere *a priori* grounds. We have here a great artist and a great resultant Poem. The latter fully justifies him against any critic's cavil as to how he might have written a better poem with the same material.

The Poet seems to have been guided all through his creative activity by a determination to be true to his material—"So absolutely good is Truth," he says in *Fifine at the Fair*. He accordingly mastered the facts of the Book even to its trivial details. These he reproduces in his Poem profusely, fitting them unlaboriously into the text and the current of his verse. He had so filled himself with these facts that they became his facts; and these names, dates, descriptive details, petty sophistries, citations of authorities, reproduce themselves as vital parts of the resurrected story. The fragments marshaled themselves out of chaos into one pervading, unifying cosmos. Instead of the crowded, sordid, confusing presentation of a criminal trial, he made it a comprehensive book of life. Yet rarely has a poet of high rank shown such respect for the integrity of his material. Still further, he has planned his Poem not by conventional genre, but has invented a form which is a vital outgrowth of the material before him, an independent and organic plan.

To all this Browning has brought the wealth of a richly endowed personality. The deeper spiritual meaning of the three major characters and of their play upon one another is purely a part of the Poet's vision. They are hopelessly obscured to ordinary sight in the Book. One phase after another of the Poet's deeper life breathes forth in these monologues so that, in the end, we have in the Poem not merely the story retold from the Book, but the wise, sane thought of Browning's full maturity; and it is this, and not the rough ore of fact, that has made the Poem what it is.

Altogether, one can hardly come from a close study of Book and Ring, side by side, without an ever-deepening sense of the might of Browning as a creative artist. The dead weight of the old Book could not bear him down. His fidelity to it could not clip his wings. Its chaotic night of evil could not daunt his moral instincts. Its sheer confusion falls readily into order. Not since Goethe have we had the play of such a giant mind upon a subject which had fascinated it; and it remains, as was said above, the macrocosm of the art and the life of Robert Browning.

One word in conclusion as to this whole matter of poetic originality in its bearing on our subject. Browning is not the less a master that he had such a source-book. The good old law of the literary spoil to the strongest has unfortunately tended to disappear of late in the canons of criticism, and no one can doubt that this has wrought no small injury in our literature. The shibboleth of originality has driven many an artist to practice sheer invention rather than resuscitation in story-telling. Browning's use of the Book, however, brings us back again to the importance of such a background of truth for all good work. The true artist finds ample opportunity for expressing what is great in himself as an artist by using such materials as come to hand. He will be their master and not their servant; they are mere tools of his craft; but the materialless storyteller who depends on sheer fancy is little better prepared for his artistic future than the carpenter who is unprovided with tools and must depend on hands and sticks and stones. Shakespeare was doubtless the greater Shakespeare for all the plays, poems, novels, and histories which are gathered in Hazlitt's *Shakespeare Library*; Dante was the greater Dante for his mastery of the whole medieval tradition of Hell, Purgatory, and Paradise; Milton was the more Miltonic for centuries of semi-artistic retellings of the story of the fall of man; Homer was the greater Homer in the richness of the patriotic balladry which had arisen around the Trojan War; and Browning rose to his masterpiece in art by seizing firmly the Book which "the Hand" had thrust into his own as a call to his greatest achievement in creative imagination.



Corpus of Topical Notes.

The following topical notes present in intelligible order the confused fact and the intricate cross-referencing of Book and Poem, and they are usually explanatory of an initial text quotation from *The Ring and the Book*. The line-numbering and text of the poem are conformed to the author's edition published by Smith, Elder & Co. Page references to the Book are indicated by B, which is followed by Roman numerals if the reference is to the original and by Arabic numerals if the reference is to the translation, the latter being more frequently employed, as the pages of translation permit the insertion of superior figures for return reference. Citation of the secondary source (pp. 207-213) is indicated by P.; of the Casanatense pamphlet (pp. 215-225) by C.; and of the general essay (pp. 227-291) by E. The annotation has been confined to the source problem under discussion, and has not dwelt on the many historical and interpretative questions which should find answer in a more general volume.—C. W. H.

CORPUS OF TOPICAL NOTES.

1—RB., I, 33, 140, 677:

"Old yellow book." The Poet's name for the Book, evidently suggested by the soiled and worm-eaten "crumpled vellum covers."

2—RB., I, 122-31:

These words are a close paraphrase of the actual manuscript title-page of the Book, page I.

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| Position of the entire criminal cause Of Guido Franceschini, nobleman, With certain Four the cut-throats in his pay, Tried, all five, and found guilty and put to death By beheading or hanging as be-fitted ranks, At Rome on February Twenty Two, Since our salvation Sixteen Ninety Eight: Wherein it is disputed If, and when, Husbands may kill adulterous wives, yet 'scape The customary forfeit. | <i>Postazione di tutta la Causa Criminale Contro Guido Franceschini Nobile Aretino, e suoi Sicarii</i> <i>stati fatti morire in Roma il di 22 Feb. 1698. Il primo con la decollazione gl'altri quattro di Forca</i> <i>Disputatur an et quando</i> <i>Maritus possit occidere Uxorem Adulteram absque incurso poenae ordinariae</i> |
|---|---|

Cf. RB., XII, 229.

3—RB., I, 136-9:

in a Latin cramp enough
 When the law had her eloquence to launch,
 But interfilleted with Italian streaks
 When testimony stooped to mother-tongue,—

All the formal proceedings of the lawyers and judges were in Latin, as a matter of course a barbarous, late, church Latin, made all the more difficult by the technical nature of the discussion. The testimony was naturally in the vernacular Italian.

4—RB., I, 145-6:

Primary lawyer-pleadings for, against,
 The aforesaid Five;

There are six arguments for and five against the Accused in the Book. "Primary" is probably used in the sense of original. Cf. RB., X, 216.

5—RB., I, 146-7:

real summed-up circumstance
 Adduced in proof of these on either side,

There are three summaries (*summario*) of evidence, one for and two against the Accused: pamphlets 4, 7, 11. Cf. RB., X, 217; XII, 230.

6—RB., I, 148-9:

Put forth and printed, as the practice was,
 At Rome, in the Apostolic Chamber's Type.

All the pamphlets in the Book, save the two anonymous Italian narratives, were printed, probably in very few copies, by the Court for use in its procedure and bear the imprint: Romae, Typis Rev. Cam. Apost. 1698. (Reverendae Camerae Apostolicae.) Browning translates lit-

erally. This papal press was an official and not a mercantile press.

7—RB., I, 150-2:

And so submitted to the eye o' the Court
 Presided over by His Reverence
 Rome's Governor and Criminal Judge,—

The arguments are addressed "*Illustrissime et Reverendissime Domine*" and on the file titles they are spoken of as by "*Illustrissimo et Reverendissimo Domino, Urbis Gubernatore in Criminalibus*." The governor at this time was Monsignor Pallavicino. The Criminal Court, however, was presided over by Vice-Governor Venturini, who had also presided over the *Processus fugæ* (Notes 269, 270), and who later issued the final decree in vindication of the good name of Pompilia (Pamphlet 18). He was possibly assisted by a board of Judges (B., 193. *Illustriss. Congregationis*), but the usual custom in the criminal law of that day was to try before a single judge. Browning, without any authority in the Book, speaks of three Judges (RB., VI, 8), and likewise without authority includes Judge Tommati (RB., I, 1052; VI, 34, 133; VIII, 219, 263), who had tried the first civil suit of Pietro for the recovery of the dowry (Note 262). Cf. Note 365.

8—RB., I, 689-90:

Doubled in two, the crease upon them yet,
 For more commodity of carriage.

Soiled streaks on many pages of the Book were evidently caused by the folding of the separate pamphlets, for the purpose of carrying them in the pocket.

9—RB., I, 691-4:

And these are letters, veritable sheets
 That brought posthaste the news to Florence, writ
 At Rome the day Count Guido died, we find,
 To stay the craving of a client there,

These three letters (B., 190-1), written at Rome on the day of Guido's execution, are addressed to Sig. Francesco Cencini at Florence. The first of these is reproduced by the Poet, RB., XII, 239-88 (Note 450); the other two are not at all in correspondence with the other letters of Bk. XII, but facts from them are used here and there through the poem (Notes 428, 429, 431, 448-9, 451). Cf. RB., I, 257-9.

10—RB., I, 85:

"Small-quarto size." The Book is 7½ by 10 by 1 inch, printed in small-quarto.

11—RB., I, 119:

Print three-fifths, written supplement the rest.

There are in fact only about 10 pages of manuscript out of 260.

12—RB., I, 694-5:

To stay the craving of a client there,
Who bound the same and so produced my book.

RB., XII, 225, 231:

To this Cencini's care I owe the Book,
* * * * *

Discreetly in my Book he bound them all,

Browning's conjecture that Cencini collected and bound the Book is evidently based on the fact that the letters were addressed to him (Note 9); this is the reasonable supposition as to the collectorship. Note the words of the third letter (B., 191). "I inclose the Fisc's argument, except a single response, which I will send to you as soon as I can lay hands on it, that your Excellency may have the entire case." This accounts for Cencini's having most of the pamphlets of the Book.

13—RB., I, 110-1:

from written title-page

To written index,

The written title-page, see page I, is followed immediately in the Book by the *Indice*, or Table of Contents, pages III and IV. Such manuscript additions are frequently made out by the modern lawyer in completing a case for his professional library.

14—RB., VII, 6-7:

Francesca Camilla Vittoria Angela
Pompilia Comparini

Such is her name as given in the baptismal record (B., 127). The full text of this entry of Pompilia's birth in the records of San Lorenzo in Lucina under date of July 23, 1680, is as follows:

Ego Basilius Rischius Chi Curatus baptizavi infantem natam die 17 ex D. Pietro Comparini Romano quondam Francisci Florentini et ex D. Violanta Romana nata filia quondam Hiacinti Conjug. degentibus in hac Parrocchia cui nomen impositum fuit Franciscæ Camillæ Victoriæ Angelæ Pompiliæ. Padrini fuerunt Reverendus Dominus Johannes Baptista Barberius quondam Ludovici Romanus, deg. in Parroch. S. Franciscæ et D. Barbara Cardill de Fabris deg. in hac Parrocchia.

Cf. RB., II, 55; IV, 213-4.

15—RB., VII, 1-2:

I am just seventeen years and five months old,
And, if I lived one day more, three full weeks;

Browning evidently calculated this accurately counting from Pompilia's birthday, July 17, 1680 (B., 127), to her deathday, January 6, 1698. Cf. RB., II, 60; III, 457-8; and Notes 350, 351.

16—RB., III, 63:

A lovelier face is not in Rome

The testimony in the Book as to Pompilia's beauty is found (B., 148): "A woman in the flower of her age and, as I have heard, of no small reputation for beauty"; (B., 184): "especially if the wife is beautiful; and (B., 197): "although it may be very difficult for a beautiful woman to preserve the decorum of her honor." No specific information beyond the subsequent note is given. Cf. RB., VI, 1997-8.

17—RB., III, 67:

Black this and black the other!

RB., XI, 1349:

The long black hair

There is a hint of Pompilia's dark complexion in one of the forged love-letters (B., 81), "that you are darker than I." Cf. RB., II, 275-6.

18—

Pompilia's affidavit, made in Rome, Monday, May 13, 1697, twelve days after her arrest at Castelnuovo, was a part of the *Processus fuga* (Note 269), or criminal process against herself and Caponsacchi for flight and adultery. It is found in the summaries of both sides, but in greater fullness in that of the Defense (B., 69-73). The marginal comments in the latter version (which are stressed by Mrs. Orr, Handbook, p. 88 as indications of something questionable in the real Pompilia's character) are, of course, the prejudiced comments of the lawyers for Guido and are worthless as evidence of guilt in Pompilia. Browning found in this affidavit much information of importance in the story; but it is in no sense a prototype of the monologue of Pompilia in the Poem, nor is it uttered at the same time nor under the same circumstances.

19—

The letter of Pompilia written from the prison of Castelnuovo, May 3, two days after the arrest, is said (B., 143) to have been "found among her private correspondence after her death." It is also referred to (B., 144).

20—RB., VII, 29-30:

He is a boy and Gaetan by name—
Gaetano, for a reason

P. 211: "After that Pompilia bore a son, whom she named Gaetano, after the saint to whom she made her vows." This is the only authority for the child's name, which is so often repeated in the poem. Cf. RB., I, 405; VI, 1389; VII, 100-105, 276; IX, 1371; XII, 688, 781.

21—RB., VII, 1223-59:

The wonderful account of the birth of the brooding mother-sense in Pompilia is Browning's own invention, and he returns to it repeatedly. Cf. RB., III, 1121-4; 1527-38; VI, 762-8; 1374-6; VII, 1439-40; X, 1073-81.

22—RB., VII, 1762-3:

My babe nor was, nor is, nor yet shall be
Count Guido Franceschini's child at all—

Pompilia seems to turn here to the thought of the immaculate conception by the Virgin Mother as the explanation of her own child's birth. At line 1692 she says: "I felt like Mary." Cf. also lines 91-2. The Fisc makes cynical reference to this possibility: RB., IX, 1352-66. Caponsacchi speaks of her repeatedly as Madonna. Cf. p. 281.

23—RB., VII, 58:

The month—there wants of it two weeks this day!

The child was sent away (line 46) when two days old—that is, December 20. (Cf. Note 299.) Pompilia is speaking January 6 (Note 350); hence the accuracy of her word, as in her mother yearning she counts the days that still separate her from her babe.

24—RB., VII, 10.

When they insert my death,

The death record in the parish register of San Lorenzo in Lucina (see illustration, p. 280) reads: "Signora Francesca Pompilia Comparini, in Rome, at the age of seventeen and a half, the daughter of former Signor Pietro Comparini, of Rome, wife of Signor Guido Franceschini of Arezzo in Tuscany, died in the Communion of the Holy Mother Church in the house where she lived on Strada Paolina; she received all the Sacred Sacraments and was buried in this, our Church." Cf. Note 351.

25—RB., VII, 32:

"Curate Ottoboni." Browning finds the name (B., 127). Othobonus had not baptized her; he merely made the sworn transcript of the baptismal record used as evidence in the trial.

26—RB., VI, 290:

"Giuseppe Maria Caponsacchi." The full name of Caponsacchi is given in its Latin form (B., xcix or 83). Cf. RB., VII, 941. The Caponsacchi family were of noble rank.

Our arms * * *

The shield quartered with white and red.

Giuseppe Maria Caponsacchi, born March 26, 1673 (Griffin), was invested Canon November 26, 1693, and resigned of his own accord May 15, 1702. (Records of the Pieve of Arezzo.) The family is now all but extinct, but still preserves a vague rumor that some priestly forbear had run off with a woman.

27—RB., VI, 346-8:

I' the Pieve * * *

* * * * *

Sub-deacon, Canon,

Caponsacchi (B., 75) says: "I am a Canon of the Pieve of Santa Maria of Arezzo, and am merely a subdeacon." At line 975, he speaks of "the pillared front o' the Pieve,—My church." This is one of the oldest and most impressive of the churches in Arezzo—its famous "pillared front" being well known.

28—RB., VII, 1323:

Our Caponsacchi, he's your true Saint George

The fact that Conti suggested Caponsacchi as traveling companion is given (B., 174): "he suggested that there was no better person than Canon Giuseppe Caponsacchi, his friend and intimate, whose spirit had stood every test." Cf. B., 60; P., 211; and Note 145.

Vasari's fine St. George slaying the dragon is the altar-piece of the church of Conti and Caponsacchi, Santa Maria della Pieve of Arezzo. This may have suggested the St. George strain in Caponsacchi's character. Cf. E., 286-9, and RB., I, 585; VI, 1771, 7; IX, 602.

29—RB., VIII, 1193:

"Pollent in potency." Arcangeli (B., xvii) speaks of Caponsacchi as *viribus pollens*. The full statement is as follows (B., 15): "Because the lover was of powerful strength, not at all timid, and all too prompt for resisting, since in

the word of one of the witnesses in the prosecution for flight he was called cutthroat." Cf. B., 110, 150.

30—RB., VII, 911:

"The rich dark-brown hides?" Browning has a hint of Caponsacchi's complexion in one of the forged love-letters (B., 81).

31—RB., VIII, 1194:

"Amasius," or paramour. Guido's lawyers continually mention Caponsacchi thus.

32—

There is little in the Book to suggest Browning's presentation of the worldly, irresponsible youth of Caponsacchi. Pompilia speaks (B., 70) of his stopping in front of their house to talk with certain young hussies. The poet may have read into the word *donnicivole* some of the opprobrium of our word flirt or even chippy, but no such sinister meaning is necessarily implied.

Tommaso, *Dizionario dei Sinonimi*, § 1413: "*Donnicivole, donna di bassa condizione, debole di spirito, con de pregiudizii Donnicivole puo intendersi della plebe, ma non dispregevole.*" Cf. RB., II, 806.

33—RB., VI, 429:

"Light-skirts." The term was possibly suggested by "*la Cantarina*" in one of the forged love-letters (B., xciii or 78).

34—

The important affidavit and cross-examination of Caponsacchi (B., 73-6) is not dated, but it was probably made about the same time as that of Pompilia (May 13, 1697), and was part of the criminal trial against himself, the *Processus fugæ*. It is manly and straightforward, and bears out Browning's interpretation of the young priest's heroic qualities, though it makes no suggestion of a personal affection for the woman-victim he had rescued. It is in no way the prototype of the monologue in the poem, and was uttered at a different time and under other circumstances.

35—

Canon Conti, so frequently mentioned in both Book and Poem as the friend of Caponsacchi, was brother of Count Aldobrandini (Griffin), who had married Guido's sister (B., 70); he was accordingly spoken of as a relative and a frequenter of the Franceschini home (B., 74, 92, 144). Conti had been invested Canon of the Pieve August 14, 1692. (Records of the Pieve.) He was in company with Caponsacchi on the evening of the comfit-throwing (Note 131) and Guido subsequently became jealous of him also (B., 70). He was fully informed of Pompilia's sufferings, and to him she turned for relief (Note 145). As he felt it improper for himself to move in the matter, he advised Pompilia to seek the aid of his friend Caponsacchi and he united his urgency to hers. He is accordingly called (B. 177) "the mediator in that flight." The fact that he was not subsequently included in the Tuscan trial of Pompilia and Guillichini for the runaway probably indicates that he had

refrained from overt act in the matter, or that he had died before the suit was instituted. He is also mentioned (B., 80) in the forged love-letters. He was probably related to the Jacopo Conti who swears (B., 42) to the ill-treatment suffered by Pompilia. Cf. B., 60, 62, 144, 159, 196; also RB., II, 938-41.

36—RB., VI, 2032:

Conti is dead, poisoned a month ago:

(B., 177): "It is public talk and report throughout Arezzo that he died a month ago under similar suspicious circumstances." The records of the Pieve give his death as occurring January, 1698—that is, subsequent to the murder of the Comparini. The word could hardly have reached Caponsacchi by the time of his supposed speech.

37—

Guido Franceschini, "a nobleman of Arezzo" (B., 10, and P., 209), of an old but impoverished family, appears in the Book in as unfavorable a light as in the Poem. He was evidently forced early to seek his fortune at Rome. Browning, however, creates outright for us a conception of his early ambition and purpose and of his later unsuccess in the battle of life.

38—RB., V, 144-5:

* * * not first in rank
But second, * * *

Evidently drawn from (B., 171): "it is untrue that his family enjoyed the highest rank of nobility in the City but * * * is of only secondary rank." Palazzo Franceschini, formerly in Via dei Cenci, is no longer in existence. The family was of low origin, came "*da un sensale*," and grew to great power, no one knows how, and during the 15th century were gonfaloniers of Arezzo. The family became extinct not long after Guido's death.

39—RB., II, 288-9:

* * * since many years,
Was friend and follower of a cardinal;

This fact is evidently drawn from P., 209: "Guido Franceschini, a nobleman of Arezzo had stayed for some time here in Rome, in the service of a person of some eminence." The Casanatense pamphlet (P., 217) says that Guido became Secretary of the Embassy for Cardinal Nerli. François Nerli, born in Florence, July 13, 1636, was son of a banker. He took orders and was raised to the Cardinalate in 1673. For a while he was Archbishop of Florence, but as he was not able to please either the Grand Duke or the people, he retired to Assisi, where he passed the remainder of his days in an agreeable retreat. He was versed in all knowledge and always considered it an honor to be the friend of the learned. He died in Rome in 1708. (Moreri, *Grande Dictionnaire*, VII, 970.) He was possibly the one to whom Caponsacchi refers somewhat scornfully (RB., VI, 1254-65). The full detail of the service given by Guido (RB., V, 292-397) is supplied entirely by the Poet. Cf. RB., II, 154-6; III, 256-7; IV, 400-15; V, 336-9, 1795-6.

40—RB., IV, 55:

"Her Eminence." Evidently a waggish translation of *sua Eminentia* (B., cxxxiv).

41—RB., IV, 417:

And not a penny in purse to show for it,—

This ironic comment of *Tertium Quid* is evidently based on (B., 169): "Out of service of a Cardinal, without a soldo." Cf. C., 217.

42—RB., V, 269-70:

Close to the Church, though clean out of it, I assumed
Three or four orders of no consequence,

The Book contains no information as to this fact, but the letters (B., cxxxv-ix) tell of the staying of Guido's sentence for a few days on the ground of his clerical privilege (*chiericato*). He was secretary of Cardinal Nerli (C., 217). Cf. RB., I, 255; X, 445-8; XI, 45-6, 52.

43—RB., II, 304:

"Thirty years." Browning seems to borrow this time from the *trent' anni nella medesima Città* (B., 122), which is said of Abate Paolo, and not of Guido. Browning uses it in connection with the latter at RB., IV, 392. Cf. RB., V, 292; X, 825.

44—RB., V, 1428:

"Fifty years." According to P., 213, Guido was fifty at the time of his execution, and he was therefore forty-six at the time the marriage took place. The baptismal records of Arezzo, however, show that he was born January 24, 1657. It runs as follows: Gennajo 24, 1657. Guido di Tommaso di Girolamo Franceschini e di Beatrice di Guido Romano. Cf. RB., I, 784; IV, 409, 719; XI, 1844.

45—RB., I, 783-4:

Lean, pallid, low of stature yet robust,
Fifty years old,

RB., IV, 718-9:

Little, long-nosed, bush-bearded, lantern-jawed,
Forty-six years old,

RB., VII, 396:

Hook-nosed and yellow in a bush of beard,

All of these descriptions of Guido's personal appearance are drawn from the statement at P., 213: "Franceschini was low of stature, thin and pallid, with a prominent nose, black hair and a heavy beard, and was fifty years of age." Browning also had in his possession the rough pen sketch of Guido found at page 275. This was probably made only a few days before Guido's execution. It was sent to the Poet by a stranger, who found it in a bundle of drawings, etc., which he bought at a sale in England. The Poet has probably stepped beyond dramatic propriety in the above words of Pompilia, which are repeated at RB., VII, 443. This is but one of many manifestations of Browning's grudge against the meanness of Guido, which will hardly let the Poet be fair to him. Cf. also RB., XII, 192-6.

46—RB., X, 543-5:

All is the lust for money: to get gold,—
Why, lie, rob, if it must be, murder! Make
Body and soul wring gold out,

This assertion of the inherent greed of Guido is made all through the reply to the Anonymous Writer (pamphlet 15), where almost every motive of Guido is traced ultimately to this. B., 168, *dannato interesse*; 169, *stimolato dell' interesse*; 171, *la sua avidità*; 171, *d'ingannar per farsi ricco*; 173, *dall' interesse deluso*; 175, *oggetto dell' interesse*; 177, *la scandalosa e detestabile cupidigia & avidità*. Bottini in his final argument also repeats this charge frequently: B., 139, *dotis cui praecipue maritus inhiabat*; 142, *eodem urgente pro lucro dotis*; 151, *pro lucro dotis*; 152, *ut dotem lucraretur*; 155, *pro lucro dotis*. Cf. RB., III, 702-10.

47—RB., XI, 2161-6:

Those are my arms: we turned the furze a tree
To show more, and the greyhound tied thereto,
Straining to start, means swift and greedy both;
He stands upon a triple mount of gold—

RB., XII, 822-4:

Shield, Azure, on a Triple Mountain, Or,
A Palm-tree, Proper, whereunto is tied
A Greyhound Rampant, striving in the slips?

These descriptions of the Franceschini arms are taken from a small water-color drawing, made by the Poet's friend, Barone Kirkup, and now pasted on the front inside cover of the Book. Notice that Browning reads into this coat of arms the greed which he felt was characteristic of the family. Cf. RB., XI, 1932-4.

48—RB., II, 487:

"Count Tommaso's death." Browning found (B., 129) that Guido was the son of Tommaso (or Thomae) Franceschini. Cf. Note 44.

49—RB., V, 188:

Countess Beatrice, whose son I am,

Donna Beatrice's character had evidently excited the Poet's indignation, as his references to her are almost fierce in their denunciation. Cf. RB., I, 571; II, 332-4; 486-91; X, 910-25. The foundation for this is largely in the servant's affidavit (B., 38-42), where the Donna Beatrice appears in a very unenviable light. The Casanatense pamphlet (p. 219) calls her a "proud, avaricious woman." Pompilia speaks slightly of her sufferings at the hands of her mother-in-law (B., 69). She bears strong relationship to the "tall pale yellow Duchess," the mother-in-law in *The Flight of the Duchess*.

50—RB., X, 880-1:

This fox-faced horrible priest, this brother-brute
The Abate,

Browning seems to express in these words his loathing of the Abate Franceschini, who was the counsellor and abettor of Guido in every step from the proposal of marriage with Pompilia (B., 169, 170) to the murder itself (Note 304). He is described (B., 116) as "an active and diligent man." The second Anonymous Writer, however, brings out the tricky and mean side of his nature, calling him (B., 176) "the manipulator of all they did, nor was a straw moved without his assistance"; and (B., 182) arraigns

him bitterly. He is mentioned among the poets of Arezzo and was probably a man of fair education and good literary talent. The Casanatense pamphlet (pp. 217-8) gives a fuller sketch of his character and career. He rose by his native genius to the secretaryship of Cardinal François Lauria, a distinguished member of the Sacred Congregation. It was this cardinal who signed the marriage agreement (B., 88). At the death of Cardinal Lauria, November 30, 1693, he rose to the lucrative and honorable post of secretary of the Order of St. John of Malta, but was forced to resign (C., 221) a few months before the murder because of the ill fame of himself and his brother Guido. Cf. RB., I, 553; II, 292; III, 251-3, 412-4; IV, 391-3.

51—RB., X, 897-900:

The boy of the brood, the young Girolamo
Priest, Canon, and what more? nor wolf nor fox,
But hybrid, neither craft nor violence
Wholly, part violence part craft:

Here we probably have the Poet's opinion of the Canon Girolamo Franceschini, who appears in no enviable light in the Book. It is evident (B., 10) he was accused of having tried to poison Pompilia, and the popular pamphleteer (P., 209) says he had rushed upon her murderously with a dagger. This latter, however, was perhaps a mistaken version of his attack on Violante (B., 40). The servant's affidavit gives several instances of his abuse of the Comparini. Cf. RB., I, 553; II, 491; IV, 396-9; X, 452.

52—RB., V, 640-1:

the satyr-love
Of whom but my own brother, the young priest,

This accusation against the Canon Girolamo (which is referred to RB., II, 498-501, 1292; VI, 844-6; VII, 808-14; X, 907) is based solely upon (B., 44): "That the Canon, my brother-in-law, had solicited me dishonorably, a thing that had never been thought of by him." This is a part of Guido's forged letter.

53—RB., III, 51:

"Monna Baldi." Probably suggested by the name Monna Baldi Albergotti (B., 38).

54—RB., VI, 521-2:

Count Guido's kind of maid—
Most of us have two functions in his house.

Maria Margherita de Contentis, who brought the first forged letter to Caponsacchi (B., 73), testified during the *Processus fugæ* to the passage of love-letters and to clandestine meetings between Pompilia and Caponsacchi, but her evidence was rejected on the ground that she was a harlot (Note 171). She is probably the witness referred to in B., 117. Cf. B., 62, 93, 143, 146.

55—RB., II, *Half Rome*:

This speaker, who typifies half of the popular opinion of Rome concerning the murder trial—namely that in favor of Guido—was probably suggested by the Italian pamphlet entitled *Notizie di fatto*, etc., pamphlet 10 of the Book. Its author was evidently well acquainted not merely

with all the evidence of the murder case and of the *Processus fuga*, but also with the technical points of the law in the case. He tries to be popular in style, but soon lapses into professional pleading. The pamphlet is mentioned only once in the legal arguments of the Book, namely, during Bottini's long closing argument (B., 152). This would indicate that it was composed late in the trial, probably not earlier than February 10. Its reference to Conti's death as a month ago (Note 36) agrees with this. It was composed to stir public sentiment in behalf of the accused assassins. Certain stylistic mannerisms, and the points and illustrations offered lead to the belief that Arcangeli himself composed it. To-day such material would be put in the columns of our large dailies, but in 1698 the pamphlet was still one of the most effective means for leading public opinion.

Half Rome of the Poem is more popular in style and is almost colloquial in tone, but deals with the facts of the case from the same standpoint of prejudice in favor of Guido. It commences with a long account of the earlier condition of the Comparini (Notes 63, 65, 67, 70), lays stress upon their subsequent financial difficulties (Notes 71-3), emphasizes the craft of the Comparini, particularly of Violante, in advancing the marriage (Notes 74, 77), in making Guido their guardian (Note 90), blames them for the domestic quarrels which afterward arose in Arezzo (Note 95), censures Pompilia for her conduct after the departure of her parents, etc. Browning has taken this standpoint of the pamphlet and has vivified it by placing it on the lips of one of the sensation-lovers of the day, who is talking on the gossip-loving level of Rome. He has even caught from the pamphlet the hint as to the inherent prejudice of the speaker in favor of husbands at the expense of wives. Cf. the following note.

56—RB., II, 1537-9:

All which is the worse for Guido, but, be frank—
The better for you and me and all the world,
Husbands of wives, especially in Rome.

This passage, which crowns the jealous husband's narrative, was probably suggested by the closing words of the first Italian narrative (B., 126): "Franceschini should be punished mildly to diminish the force of immodesty and impudence. For the woman is not without adherents, who triumph throughout all Rome in a coterie of treachery, both in public and in private. This is for the oppression and derision against husbands who have regard for their reputation. And they give the title of pedantry to that circumspection which one ought to practice for the preservation of his own honor."

57—RB., I, 873-4:

Born of a certain spectacle shut in
By the Church Lorenzo opposit.

The surroundings of the speaker in *Half Rome*, the curious and excited throng pressing into San Lorenzo to see the dead bodies so fully described by *Half Rome* (lines 17-101), was suggested by

the popular pamphlet (P., 213): "In the meantime there were exposed in San Lorenzo in Lucina the bodies of the assassinated Comparini, * * * The surprise of the people at seeing the said bodies was great, because of the atrocity of the deed." Cf. RB., VIII, 1352.

58—RB., II, 18:

"This morn." January 3, 1698, the day after the murder. Cf. RB., I, 846.

59—*The Other Half Rome*:

The *Other Half Rome* was probably suggested by the second Italian Pamphlet of the Book, No. 15. The latter says (B., 183): "The intention of the author of the present response is no other than to make clear the falsity of the suppositions against the honor of the poor wife and against the Comparini." It was evidently written in refutation of pamphlet 10, which it meets with irony and scorn as well as with argument. It likewise insists (as does *Other Half Rome*) on the comfortable circumstances of the Comparini (Note 67), on the scheming of the Franceschini to bring about the marriage (Notes 75, 76, 79, 80, 84, 85), on the craft and cunning of Abate Paolo in particular (Note 50), on Guido as their Padrone (Note 90), on the cruel treatment suffered by the Comparini in Arezzo (Notes 95, 98), on the repeated instances of the greed of the Franceschini (Note 46), and on the justification of Pompilia in the various steps of her flight.

The Poet has invented both the situation and the individuality of the speaker without suggestion from the Book. He might have found an excellent situation for one speaker in the scene of the popular turmoil on the reentry of the captured assassins on the evening following the murder (P., 212). But the speaker's sympathy for Pompilia probably necessitated a somewhat finer nature than would have been found in one trooping after the popular sensation of the day.

60—RB., I, 904:

"Three days ago." The *Other Half Rome* is supposed to speak on January 4, "three days" after the murder, according to the Roman way of counting, January 2-4. Lines 36 and 1640 are in agreement with this date, but line 867 can not be reconciled therewith and should probably read "since three days."

61—RB., I, 903:

motley merchandizing multitude.

RB., IV, 10-11:

* * * this rabble's-brabble of dolts and fools
Who make up reasonless unreasoning Rome.

These sneers may have been suggested by the second pamphleteer's scornful words (B., 168) as to "the dull heads of the crowd" and (B., 168) "to excite compassion, no less in foolish persons."

62—The Pope:

The historic Pope, Innocent XII, had only a slight connection with the Franceschini tragedy. Abate Paolo had made ineffective appeals to him (Notes 280, 281). And when the death sentence against Guido had been stayed tem-

porarily on the grounds of clericate (Note 42), the Pope overruled this delay. The second Anonymous Pamphleteer (B., 183) also speaks of him as "most zealous of justice." He was not otherwise in touch with the case as recorded in the Book. The Casanatense pamphlet, however (p. 223), states that when Guido's crime and arrest were reported to the Pope, "He gave commands that, without delay and with all rigor, trial should be brought, this being a case which, by reason of the consequences that might arise from it, should be examined into with very special attention."

Rev. John Chadwick in reporting a conversation with Browning said: "Of the old Pope of the poem, too, he spoke with real affection," and he goes on to tell of the medallion of the good Pope which was presented to the Poet by a friend, and which he prized so highly. The Dublin Review criticized the Poet for presenting an utterly impossible Pope. There is no doubt that this liberal thought and unchurchmanlike attitude is unhistoric. The Poet was evidently well acquainted with many admirable qualities of this historic Pope, and saw an opportunity to use him as the mouthpiece of his own attitude toward the tragedy. No Pope ever spoke even to himself the theology and church polity of this monologue. The Pope indeed is merely Browning's typical wise old man—a brother of Rabbi Ben Ezra and the Apostle John. (Cf. E., 270-1.)

63—RB., II, 193-4:

These wretched Comparini were once gay
And galliard, of the modest middle class:

The fullest statement of the social and financial condition of the Comparini is given in the pamphlet of the Anonymous Writer (B., 116). This pamphlet and the retort to it dwell on this earliest history of the case and on the trickery of both parties. In this respect they are strikingly like *Half Rome* and the *Other Half Rome*. In the murder case itself this earlier portion of the story is of little importance. Cf. RB., III, 115-26; IV, 70-94.

64—RB., II, 195:

Born in this quarter seventy years ago

RB., I, 798:

Aged, they, seventy each,

At P., 213, the Comparini are called septuagenarians, but as Violante was only 48 at the time of Pompilia's birth (B., 172) she was now 65. Cf. RB., III, 192-3; IV, 75.

65—

Violante Comparini, ne Peruzzi, is spoken of (B., 116) as a "very shrewd woman and of great loquacity," and her own acts and the various indications of character throughout the Book seem to agree with this. P., 209, says: "She was driven by the ambition of establishing her daughter in the home of persons of good birth." Browning has filled out this mere outline of character with interesting fullness till we find her the overbearing, cunning, headstrong woman of the Poem.

The Casanatense pamphlet adds other lines to her disagreeable portrait. But even her character is softened in the words of Pompilia. (RB., VII, 269-343.) Cf. RB., III, 133-4.

66—RB., II, 203-4:

In Via Vittoria, the respectable street
Where he lived mainly;

The sole reference in the Book to this home in Via Vittoria is made at B., 127, the address of Pompilia's letter in the third Summary. In the Poem this street-name is repeatedly used. For Strada Paolina where they lived at the time of the murder, cf. Note 292, also RB., II, 475; III, 74, 364; IV, 455, 476; V, 1333; XI, 969, 1154.

67—RB., II, 200-1:

wealthy is the word,
Since Pietro was possessed of house and land—

B., 116, states that Pietro's property amounted to from 10,000 to 12,000 scudi invested in well-situated houses, and bonds (B., 170). Cf. P., 209.

68—RB., II, 211:

He owned some usufruct, had money's use

Most of Pietro's property seems to have been entailed, he enjoying only the income in part (Note 70), the rest going to a trust fund which an heir would secure for him. This usufruct is spoken of at B., 50, 116; P., 210. Cf. RB., III, 159.

69—RB., IV, 135:

"Fidei commissum." A sum held in trust. Cf. B., 50, 116.

70—RB., IV, 76-7:

moneys so much;
And also with a remnant,—so much more

Probably suggested by the account (B., 116): "The property of Pietro Comparini did not amount to more than the sum of 10,000 or 12,000 scudi, subject to a reversionary interest, coupled likewise with the obligation to compound a good percentage of the income * * * there being a bar against his use of the capital and of a part of the income."

71—RB., IV, 96:

Indulge so their dear selves.

Possibly suggested by the first Anonymous Writer (B., 116): "He was too indulgent to his stomach and was given to laziness."

72—RB., II, 265:

And poverty had reached him in her rounds.

RB., IV, 97:

Pietro finds himself in debt

Suggested by (B., 116): "He was brought down to a state poor and miserable enough," and (B., 194): "his creditors * * * were pressing him hard."

73—RB., IV, 109-10:

He asks and straight obtains
The customary largess,

Suggested by (B., 116): "And after making a statement of his property, received from the Papal Palace secret alms each month."

74—RB., II, 268:

And who must but *Violante* cast about,

The Anonymous Author (B., 116) speaks thus of Pietro, but Browning probably felt this act was more in accord with *Violante's* aggressive, scheming character. Cf. RB., III, 132-3, 170-1; IV, 130-45.

75—

Other Half Rome, on the other hand, follows the answering pamphlet which makes the *Franceschini* brothers set the marriage negotiations under way (B., 169).

76—RB., X, 532-43:

He purposes this marriage, I remark,
On no one motive that should prompt thereto—

This strong protest of the Pope against the marriage of convenience is Browning's, and is not characteristic of the age and society of which it is written. The historic Pope would not have uttered it. It is not the bargain in the marriage, but the cheating in the bargain, which is criticized by the second Anonymous Writer (B., 169-71).

77—RB., II, 344:

What constituted him so choice a catch,

Note that the reply to this question, which presents the selfish purpose of the *Comparini*, is drawn from the first Anonymous Author (B., 116): "This bargain was advantageous to Pietro and his wife in freeing them from the straits in which they found themselves." Cf. RB., II, 413-5.

78—RB., IV, 440-2.

To the woman-dealer in perukes, a wench
I and some others settled in the shop
At Place Colonna:

Evidently drawn from a reference (P., 209) to a "hair-dresser near the Piazza Colonna," and (B., 169) "in the shop of certain women hair-dressers." It was this woman who brought them the news of the eligibility of the match with *Pompilia*. The *Casatense* pamphlet (C., 217-8) dwells more fully on *Guido's* craft in conciliating and bribing this go-between. According to it *Guido's* bribe was 200 scudi. Cf. RB., IV, 447-50.

79—RB., IV, 461-74:

I'll to the husband * * *
* * * * *
And wait on Madam *Violante*.

RB., III, 260:

to *Violante* somehow caught alone.

B., 169, and P., 209, lay particular stress on the cunning of the *Franceschini* in approaching *Violante*, rather than Pietro, the former likening it to the guile of the serpent in Paradise, who attacked Eve rather than Adam. Cf. C., 218.

80—RB., III, 270-5:

He dissertated on that Tuscan house,
Those *Franceschini*,—very old they were—
Not rich however—

B., 170: "Nor was it difficult for him to astound the woman, because he knew how to impress her very well with the thought of the grandeur of his country, of his first-rate nobility of birth, and of the great income from his patrimony." Cf. RB., IV, 477-88; P., 209, and C., 218.

81—RB., IV, 489:

There's Pietro to convince: leave that to me!

B., 170: "The credulous, but deceived woman so cajoled her husband that she at last induced him to sign the marriage agreement." Cf. P., 209, and C., 218.

82—RB., V, 494-5:

I falsified and fabricated, wrote
Myself down roughly richer than I prove.

In presenting his case before Pietro, *Guido* made a written statement of properties which yielded him an income of 1,700 scudi, though it was later proved that he did not own a dollar's worth of income-bearing property. *Guido* claimed he did this at the instigation of *Violante*. This trick of *Guido* is frequently spoken of in the Book (B., 57, 170, 171, and P., 209). When taken to task for it by his brother, *Guido* declared he had done so at the instigation of *Violante* (B., 117).

83—RB., IV, 490-3:

Did Pietro make demand and get response
That in the Counship was a truth, but in
The counting up of the Count's cash, a lie.

B., 170: "Of whom he [*Pietro*] had had few good reports, and these were far different from the pretended riches, and vaunted nobility." P., 209: "The resources of the *Franceschini* * * * were quite different from what they had been represented." Cf. RB., III, 396-401.

84—RB., III, 428-9:

Home again * * *
Went Pietro to announce a change

RB., IV, 495:

Declined the honour.

B., 170: "*Pietro* absolutely refused to go on with the effectuation of the marriage." Cf. P., 209, and C., 218.

85—RB., III, 448-60:

[*Violante*] * * * holding a girl veiled too,
Stood, one dim end of a December day,
In Saint Lorenzo on the altar-step—

* * * * *
* * * * * wed
Guido clandestinely, irrevocably
To his *Pompilia*

This and the other accounts of *Violante's* marrying her daughter to *Guido* without the knowledge of *Pietro* are based on (B., 170-1): "At any rate, the said *Guido* joined the said *Violante*, whom he had imbued with his flatteries and endearments, spurning any further consent of *Pietro* by keeping him in ignorance of it. And without knowledge of the latter, *Guido* contracted the marriage with the said *Francesca Pompilia* in the face of the Church." And P., 209: "The mother of *Francesca*, not seeing any chance to give her daughter to *Franceschini*, had her secretly married during December, 1693, in San Lorenzo in Lucina." December is no doubt wrong, as Cardinal *Lauria*, who died on November 30, had had a hand in the marriage (Note 88 and C., 218). The marriage is not recorded in the register of San Lorenzo in Lucina during the last quarter of 1693. Cf. RB., II, 59-70, 359-78; IV, 495-8; VII, 376-473.

86—Omitted intentionally.

87—RB., II, 380-9:

Once the clandestine marriage over thus,

* * * * *

Pietro could play vast indignation off,

B., 171: "When, after a few days, Pietro found out that the marriage had taken place, though he reproved the deed vigorously," etc. In the Poem, Pietro's indignation at the secret marriage is variously told at RB., III, 469-83; IV, 499-504; VII, 489-571. Cf. P., 209, and C., 218.

88—RB., III, 470-6:

Violante sobbed the sobs and prayed the prayers

* * * * *

Till Pietro had to clear his brow apace

* * * * *

* * * could flesh withstand the impurpled one,

The very Cardinal,

B., 171: "Yet because what is done can not be undone, and by means of the cajoleries of Violante his wife and the interposition of another cardinal [Cardinal Lauria, cf. p. 218 and Note 50], whom the Abate, Guido's brother, served, the poor old fellow was constrained to drink the cup of his bitterness."

Note Pompilia's explanation of his acquiescence, VII, 523-7. Cf. RB., II, 74-8, 156; IV, 1610-1; V, 1797-1801; VII, 545-50.

89—RB., VII, 472-3:

When I saw nothing more, the next three weeks,
Of Guido—

Pompilia (B., 69) says: "After I was engaged to him he stayed here in Rome for two months without consummating the marriage." Cf. line 736.

90—RB., II, 404-5:

They, for their part, turned over first of all
Their fortune in its rags and rottenness

An interesting illustration of the correspondence of *Half Rome* and the *Other Half Rome* with the two Italian Pamphlets of the Book (cf. Notes 55, 59) is seen in the treatment of the turning over of Pietro's property to his son-in-law. *Half Rome's* account (RB., II, 403-17) is drawn from B., 116 (cf. 59, 194); while that of the *Other Half Rome* is drawn from B., 170. Cf. also P., 209, and C., 218.

91—RB., III, 496-7:

Guido gained forthwith
Dowry, his wife's right;

A dowry of 2,600 scudi was given with Pompilia. Cf. B., 116, 170, and P., 209.

92—RB., III, 509-11:

As for the usufruct—
The interest now, the principal anon,
Would Guido please to wait, at Pietro's death:

B., 116: "With the added hope of future succession to the rest of his property." B., 170: "And at the death of the said Comparini for all their possessions."

93—RB., III, 512-16:

Till when, he must support the couple's charge,
* * * * *

Bread-bouny in Arezzo

The fact that Guido undertook the obligation of feeding, housing, and serving the Comparini is spoken of several times in the Book (B., 58, 69, 86, 164, 170).

94—RB., II, 429:

They went to Arezzo,—Pietro and his spouse,

The fact that the Comparini accompanied their daughter and son-in-law back to Arezzo is told by Pompilia (B., 69) and elsewhere (B., 10, 50, 117, 171, and P., 209). Cf. also RB., I, 565-8; VI, 792; VII, 559-64.

95—RB., II, 462-525; III, 521-39; IV, 550-72; V, 607-47:

All of these accounts of the family quarrels between the Comparini and Franceschini are suggested by various passages in the Book. The most specific information on the point is found in the long affidavit of the woman servant (B., 38-42). Both the Governor and the Bishop in their letters refer to the troubles and blame the Comparini (B., 68-9 and 76). The Anonymous Writer (B., 117) ascribes the trouble to the "bitter tongue of Pietro" and the "haughtiness of Violante." Whereas, Bottini (B., 57) says: "Notorious indeed are the altercations which, on account of the parsimony of the home, straight-way arose," etc. Cf. C., 219: "The mother of Guido, a proud, avaricious woman, who governed the household despotically, took to stinting it even in the necessary food. This moved the Comparini to complaints, to which they first responded with insults and then with threats." Cf. B., 50, 171, and P., 209.

96—RB., II, 497:

where Violante laid down law.

The letter of the Governor of Arezzo asserts (B., 68) that "Signora Violante * * * presumed to domineer over the house and to keep the keys of everything." And Arcangeli practically echoes this charge (B., 87).

97—RB., II, 507-10:

And Pietro, * * * the wine-house bench—

B., 68: "Signor Pietro had given over the company and conversation of the best people of the city, and had struck up acquaintance with the most vulgar. And with them he began to frequent daily all the taverns there. This was little for the good name of the Franceschini." Cf. also B., 87.

98—RB., II, 504:

Four months' probation of this purgatory,

Pompilia (B., 69) says that her parents remained in Arezzo four months, while B., 57, 171, speak of a few months. These probably were the winter months of 1693-4, as they went there in December (P., 209) and were in Arezzo during both January (B., 38) and February (B., 39, 58). Cf. RB., III, 522; IV, 568; V, 617; IX, 276-8; XI, 1195.

99—RB., IV, 569-70:

To beg him to grant, from what was once their wealth,
Just so much as would help them back to Rome

B., 118, states that "they were provided with money for the journey, and in Rome with furniture to put in order the house they had left." But P., 210, says that they had to "beg it of Franceschini, who scarcely gave them the necessary expenses of the journey." Cf. C., 219.

100—RB., III, 529-36:

The starved, stripped, beaten brace of stupid dupes
* * * * *
* * * carried their wrongs
To Rome,—

The second Anonymous Writer (B., 171) says: "Such were the miseries and abuses the Comparini had to suffer in victuals and in harsh treatment that they were obliged to return to Rome after a few months." Cf. also B., 10, 50, 69, 100, 210, and RB., I, 569-77; II, 519-25; V, 764-5; VI, 794; XI, 1199-1201.

101—RB., II, 534-7:

* * * * *
Once in Rome.
* * * * *
Her first act to inaugurate return
Was, she got pricked in conscience:
RB., III, 180:
Made in the first remorse:
RB., IV, 575:
* * * feeling conscience prick,

B., 172: "Urged on by remorse of conscience."

102—RB., II, 537-8:

"Jubilee gave her the hint." B., 172: "At the time of Jubilee." Cf. P., 210, and RB., III, 180, 555-65.

103—RB., II, 549-51:

* * * * *
She confessed
Pompilia was a fable not a fact:
She never bore a child in her whole life.

P., 210: "Violante Comparini revealed in confession that Francesca Pompilia * * * was not their daughter." Cf. B., 172. See also the elaborate and interesting account of Violante's confession, RB., III, 566-82, and IV, 576. Cf. C., 219.

104—RB., III, 583-98:

Replied the throne—"Ere God forgive
* * * * *
Tell him, and bear the anger which is just!"

B., 172: She "was constrained by her confessor * * * to reveal it to Pietro," etc. Cf. P., 210.

105—RB., II, 558:

The babe had been a find i' the filth-heap,

There is no room for doubt that Pompilia was of vile parentage. The Anonymous Writer (B., 118) speaks of her as being "of most vile parentage." Her mother is spoken of as "*meretrix*" (B., 97, 99); "*villissima lotrix*" (B., 10); "*villissima et inhonesta mulier*" (B., 17); "a poor widow and stranger" (P., 210). The Casanatense pamphlet gives a somewhat different account (C., 219). The Poet repeats the fact in one after another of the monologues, and he makes their attitude toward the fact something of a revelation of the speakers' own characters. They range from the brutal hatred of Guido to the tender, loving comment of Pompilia upon

her own mother. Cf. RB., II, 549-83; III, 208, 549-668; IV, 149-91, 575-80, 611-2; V, 88-9, 768-74; VII, 131-2, 139-45, 864-94; XI, 1217.

106—RB., V, 90:

Her mother's birthright-license
RB., VII, 863:

—Adding, it all came of my mother's life

Arcangeli accuses Pompilia of being like her mother in evil life (B., 18): "Nor was it difficult to persuade that girl to do what she was prone to by inborn instinct, and by the example of her mother." Cf. B., 99.

107—RB., II, 580:

Partly to cheat the rightful heirs,

B., 118, gives Violante's motive in the fraud as her desire to keep "her husband's creditors from their rights" and P., 210, "this had been adopted to bring it about that the reversionary interest would fall to their house, and hence to make good the many debts of her husband." Cf. RB., III, 194-6; IV, 218-9. Browning's various versions of the cheat and the motive which lay behind it are given, RB., II, 58, 219-47; III, 179-229; IV, 131-210; VII, 270-300; VIII, 875-8.

108—RB., II, 597:

"The biter bit," possibly suggested by the ironic comment on the trick at B., ccxii: *ars deludit arte*. Cf. RB., V, 1360-1.

109—RB., II, 656-67:

* * * * *
they noised abroad
Not merely the main scandal of her birth,
But slanders written, printed, published wide,

The Book makes several references to the fact that Guido had suffered thus at the hands of Pietro. B., 144, speaks of "pamphlets about the domestic scantiness and the base treatment suffered." Cf. also B., 27, 118, 154, 164. Probably the servant's affidavit (B., 38-42) was thus slanderously circulated throughout Rome. Cf. RB., II, 671-6; IV, 640-5; V, 765-7; XI, 1225.

110—

This affidavit of Angelica was evidently secured by Pietro to aid him in his suit, 1694, to recover the dowry paid to Guido and to annul the dowry contract (Notes 260-2). It was probably a part of the injurious publications (Note 109) circulated by Pietro throughout Rome to the detriment of Guido. Browning uses its facts only slightly (Notes 117-9), but from it gained almost all of his detailed knowledge of the penury and parsimony of the Franceschini and of the sufferings of the Comparini while staying in Arezzo. The affidavit is referred to by the lawyers of the Book (B., 58, 86, 117).

111—

The attestations (B., 42-3) concerning the ill-treatment which Pompilia had suffered in the home of her husband were evidently secured as a part of her defense in the *Processus fugæ*. It is interesting to note among the witnesses the names of a Conti (not the Canon) and of Confessor Romano, to whom Pompilia had had recourse in vain.

112—RB., II, 684-6:

* * * * * she wrote,
* * * * * her husband's brother the Abate there,

This letter of Pompilia to Abate Franceschini is twice given in full in the Book (B., IV and lxxxvii). During the trial for murder, it was subject to frequent discussions by the lawyers (B., 10, 18, 59, 87, 142, 154, 195; and P., 210). It seems also to have been formerly presented as evidence in the *Processus fugæ* (B., 44), but had been "rightly rejected by the judges" (B., 142). We quite agree with Lamparelli (B., 195) "it is certain that if the letter be read attentively, it will be absolutely impossible to assert that she had written it with a calm mind." The letter is so grossly impossible from such a young girl, that it must have been of Guido's drafting. And if so, inasmuch as it forecasts the flight of Pompilia with a lover, and other later developments of the case, we are led to infer that the whole of this later trouble was the deliberate plot of Guido, as charged in RB., III, 712-37. Cf. Note 121; also RB., III, 738-71; IV, 769-86; V, 834-43; VIII, 158-72; IX, 809-21.

113—RB., II, 721:

Word for word, such a letter did she write.

This refers to the contents of lines 689-718, which are indeed a fairly close adaptation of the original (B., 44). The letter is repeated again in this way by *Tertium Quid*, IV, 778-84. Cf. RB., II, 689-718.

114—RB., III, 751-3:

This letter, traced in pencil-characters,
Guido as easily got re-traced in ink
By his wife's pen,

Evidently based on Pompilia's explanation of the letter as given (B., 72): "My husband wrote the letter with a pencil, and then made me trace it with a pen and ink it." Cf. RB., III, 1315-6; IV, 770-2; V, 842-3; VIII, 161-4; IX, 816-21.

115—RB., VII, 746:

Go this night to my chamber, not your own!

Cf. B., liv: *Fece strepito grande, perche non voleva andare a dormire col Signor Guido, suo Consorto*; also cf. B., 90: *Renuebat jacere cum viro*.

116—RB., IX, 1338-41:

* * * * * who had been harassed and abused
* * * * *

For non-production of the promised fruit
Of marriage?

In her affidavit (B., 69) Pompilia says: "As I did not become pregnant, my husband and my mother-in-law Beatrice began to turn against me because I had no children." Cf. P., 210.

117—RB., V, 70-4:

—How she can dress and dish up—lordly dish
Fit for a duke, lamb's head and purtenance—
With her proud hands, feast household so a week?
No word o' the wine rejoicing God and man
The less when three-parts water?

The servant in her affidavit (B., 40, 41) speaks of the lamb and lamb's head cooked and divided by Donna Beatrice, and of the diluted wine for the table.

118—RB., IV, 360:

Creeps out a serving-man on Saturdays

B., 40: "When he did not buy the lamb on Saturday * * * Signor Guido gave money to Joseph, the house-boy," etc.

119—RB., V, 1388:

"The coarse bread." B., 41 says: "The bread was as black as ink, and heavy, and ill-seasoned."

120—RB., V, 1361-3:

and truly divers scenes
Of the Arezzo palace, tickle rib
And tease eye till the tears come, so we laugh;

Probably refers to the making public of the servant's testimony (B., 38-42). Cf. Note 109.

121—RB., VI, 1795-8:

That he, from the beginning pricked at heart
By some lust, letch of hate against his wife,
Plotted to plague her into overt sin
And shame, would slay Pompilia body and soul.

This accusation that Guido plotted to drive Pompilia to Caponsacchi's arms, while it is not referred to in the Book, seems not improbable in the light of certain facts given there. The letter which he forced Pompilia to write (Note 112) forecasts many of the grossly improbable crimes with which he taxed his child-wife three years later. The love-letters (Note 232) are almost impossible of explanation save as part of some such deliberate scheme. This is quite in accord with the ascertained character of Guido, who was crafty and cruel. Cf. Note 150; also RB., III, 721-37, 776-87, 1356-9; IV, 663-98, 749-51; VII, 695-9; X, 603-13; and E., 278.

122—RB., IV, 788-90:

All sort of torture was piled, pain on pain,
On either side Pompilia's path of life,
BUILT round about and over against by fear,

Pompilia tells (B., 70) of the cruelties of her husband, attributing them to her sterility and his jealousy of her. Elsewhere in the Book general reference is made to the ill-treatment suffered by the wife. Cf. Notes 128, 129, 132-4.

123—RB., V, 896-902:

It was in the house from the window, at the church
From the hassock * * *
That still Pompilia needs must find herself
Launching her looks forth, letting looks reply
As arrows to a challenge;

This charge of general flirtation is told by Pompilia herself (B., 70), where she asserts that it was without foundation. Arcangeli reiterates the charge (B., 91): "The wretched Accused complained bitterly that she was not content merely with a single lover at Arezzo, but that she had been defiled by many suitors." Cf. RB., VII, 677-80; IX, 298-301; and P., 210.

124—RB., II, 809-10:

Pompilia chose to cloister up her charms
Just in a chamber that o'erlooked the street,

Possibly suggested by (B., 70): "My husband began to be jealous of me and forbade me to show my face at the window."

125—RB., II, 861:

Or wife and Caponsacchi may fare the worse!

Both Pompilia and Caponsacchi mention the threats of Guido (B., 70, 74).

126—RB., VII, 684-5:

I tried to soothe him by abjuring walk,
Window, church, theatre, for good and all,

B., 70: "To remove that occasion of jealousy I never showed my face save when it was absolutely necessary."

127—RB., II, 833-4:

Your lady loves her own room, sticks to it,
Locks herself in for hours, you say yourself.

Cf. Pompilia's words (B., 70): "I retired to my room whenever he came to our house, that I might not have to take even more trouble." Also cf. B., 173, 180.

128—RB., V, 938-46:

This account of Guido's jealousy of Caponsacchi is founded on Pompilia's story of the jealousy (B., 70): "Because the Canon Caponsacchi with other young men of the place used to pass before our house * * * my husband began to fume with anger at me." Cf. RB., II, 805-7, 835; and Bottini's contemptible assertion of shrewd intrigue (RB., IX, 335-75).

129—RB., VII, 693-4:

Cease from so much as even pass the street
Whereon our house looked,

Pompilia (B., 70) says: "And begged him not to pass that way, that he might relieve me from all the distresses," etc.

130—RB., VI, 653:

Tell him he owns the palace, not the street

This reply of Caponsacchi to the request given in the preceding note is suggested by B., 70: "He replied that * * * Guido could not stop his passing along the street."

131—RB., VI, 394-433:

Found myself at the theatre one night

This incident of the comfit-throwing at the theatre is told by Pompilia (B., 70): "While we were in a great crowd at the play one evening, Canon Conti, the brother of the husband of my sister-in-law, threw me some confetti. My husband, who was near me, took offense at it—not against Conti, but against Caponsacchi, who was sitting beside the said Conti." We have here an excellent example of Browning's master power in raising the fact of the Book to a higher emotional and moral plane. Cf. RB., II, 801; IV, 944; VII, 950-90.

132—RB., VII, 1029:

O Christ, what hinders that I kill her quick?

Pompilia tells of these words (B., 71): "As soon as we had returned home, he pointed a pistol at my breast, saying: 'O Christ! What hinders me from laying you out here? Let Caponsacchi look to it well if you do not wish me to do so, and to kill you.'" Cf. B., 60.

133—RB., IV, 1069-70:

The silent *acquetta*, stilling at command—

RB., V, 948-9:

Showing hair-powder * * *
For poison

There are several accusations that Guido threatened to poison his wife (B., 173): "The said Guido had made a mixture of poison, with which he threatened he would take her life without the uproar attendant on the use of arms; and thus he would be the surer of his crime going unpunished." Cf. B., 71, 144, 173, 174, 177. B., 10, also speaks of an accusation against the brother, Girolamo, that he too had offered her poison (Note 51). Cf. RB., V, 1737; VII, 1250; IX, 381.

134—RB., V, 949-50:

making believe
At desperate dolings with a bauble-sword,

The threat of poison and sword are coupled (B., 144): "The wife was continually afraid that he would kill her, either with the sword or by means of poison." Cf. B., 173, and RB., VII, 1250; IX, 380, 1149.

135—RB., II, 874:

She bade the Governor do governance,

Pompilia thus driven to desperation, evidently turned for help to the Governor (*Commissario*) of the city (B., 42, 58, 143, 173, 195, 210). This is referred to even more frequently in the poem, RB., III, 967-9; IV, 799; V, 1825; VI, 822-30; VII, 1265; IX, 262-3, 993; X, 971-81; XI, 1331—an interesting illustration of the possibilities of varying a given fact.

136—RB., VI, 2051:

"Vicenzo Marzi-Medici." He so signs himself in his letter (B., 69), and the Bishop of Arezzo (B., 77) speaks of "Signor Senator Marzi-Medici, who presides over the laic government of this town."

137—RB., III, 997-8:

* * * promised the pair,
Wholesome chastisement * * *

This threat of the Governor in reply to the recourse to him is found in his own letter (B., 69): "I threatened them with prison and punishment unless they behaved themselves." Cf. RB., X, 977-8, and Note 147.

138—

This letter of the Governor of Arezzo (B., lxxxi-ii) to Abate Franceschini under date of August 2, 1694, was evidently written as part of the quarrel and lawsuit between the Franceschini and Comparini. It is ample evidence of the fact that Pompilia could have no hope of help in such a man, after her first recourse to him (Note 135). It is cited by the lawyers in their arguments (B., 87, 88, 117, 143).

139—RB., II, 875:

Cried out on the Archbishop.

Pompilia's appeal to the Bishop of Arezzo is still more frequently mentioned. She says

(B., 71): "At the beginning of these troubles, I went twice to Monsignor the Bishop, because he might have remedied it in some way; but this did no good because of his relations with the house of my husband." The Governor of Arezzo, in his letter under date of August 2, 1694, says (B., 68): "Of much greater scandal were the many flights and petitions made by Guido's wife, their daughter, to Monsignor, the Bishop." The lawyers interpret this fact according to their prepossessions: Arcangeli (B., 89) speaks of the "eager and indecent recourse without cause to the most reverend Bishop" and offers evidence to show that she was unwilling to live with her mother-in-law and brother-in-law. Bottini, on the other hand (B., 143), accuses the Bishop and Governor of having carelessly rejected her recourse to them. Cf. B., 42, 43, 58, 76, 87, 143, 173, 195, and P., 210. C., 220, gives some additional information concerning the fact.

This fact of her recourse to the Bishop is also much repeated in the Poem (RB., III, 970-89; IV, 801-6; V, 1823-31; VI, 822-30; VII, 748-859, 1264; IX, 262-3, 994; X, 986-93, 1454-70; XI, 1332).

140—RB., II, 876:

Three successive times.

RB., IV, 801:

Flung herself thrice

RB., V, 1823:

not once, but so long as patience served—

Pompilia in the preceding note speaks of twice making such appeal (B., 76); the Bishop himself says she made "some recourse" to him. He speaks of this as having happened many times (B., 44). I find no authority for the definite thrice of the Poet. Cf. RB., III, 1003.

141—RB., II, 879:

"On the public steps thereto." This detail seems to be suggested by (B., 43): "She took her station at the head of the stairs and stayed there," etc.

142—RB., III, 1011:

"Coached her." Probably suggested by the Governor's words (B., 68): "When she had been rebuked by that most prudent Prelate, he always sent her home in his carriage." And the Bishop himself (B., 77) says: "I had her taken home in my carriage twice." Cf. P., 210.

143—

The letter of the Bishop of Arezzo (B., xci-ii or 76-7), like that of the Governor, was in all probability written to be used by the Franceschini in defending themselves from the accusations and the lawsuit of the Comparini in the year 1694. Evidently there was little help for Pompilia in flight to such a man. It is used in legal argument (B., 88, 143).

144—RB., III, 1015-7:

* * * as a last resource, betook herself to
* * * * *

A simple friar o' the city,

Pompilia makes the sole reference in the Book to this fact (B., 71): "I went about a month later to confession to an Augustinian Father, whom they call Romano. I told him all my distresses, imploring him to write to my father in my name, * * * and to tell him that I was desperate, and must part from my husband and go to him in Rome. But I had no response." This fact is repeated in the Pamphlet (P., 210). Probably the Priest Romano, who (B., 42) signs the affidavit concerning Pompilia's distress in her husband's home, is the one referred to by Pompilia. Browning's variations upon this fact are interesting. Cf. RB., IV, 807-41; VI, 831-56; VII, 1282-1302; X, 1471-85.

145—RB., VI, 2026-7:

She only tried me when some others failed—
Began with Conti,

This fact is brought out by the second Anonymous Author (B., 173): "She intrusted herself to the Canon Conti, who is closely related to the Franceschini, and declared to him her miseries, her perils, and her just fears (although they were not unknown to him) * * * He was touched with living compassion and moved to free her therefrom by pity for her grievous state." This fact is repeated by the Pamphleteer (P., 210). Cf. B., 196; RB., VII, 1309-16, and Note 35.

146—RB., VII, 1304-6-8:

Last, in a desperation I appealed

* * * * *

To Guillichini, that's of kin,

* * * A flying gout

Pompilia, in a letter to her father, states (B., 127) that Guillichini had planned to accompany her, but had been prevented by ill health. His help in arranging the flight is likewise mentioned (B., 62, 63, 159, 196, and RB., II, 933-6; V, 1016; VI, 2028).

147—RB., VII, 1267-71:

'twas he who,—when I gave
A jewel or two, themselves had given me,
Back to my parents,—since they wanted bread,
* * * * *

Spoke of the jail for felons,

This was evidently suggested by (B., 87): "He was compelled by the Governor of the City, under fear of imprisonment, to restore certain trinkets and gems of his daughter, which he had taken away." Cf. Note 137.

148—RB., IV, 963-4:

Could no one else be found to serve at need—
No woman

Guido's lawyers raise this very question (B., 92), and retort is made by the other side (B., 144).

149—RB., III, 1040-2:

"At last * * * found Caponsacchi." Pompilia (B., 71) says: "Therefore, not knowing to whom I might turn, * * * I finally resolved to speak to the said Caponsacchi." Cf. RB., III, 1345-8.

150—

The actual communication between Pompilia and Caponsacchi, in letter and in conversation before their flight together, is subject to some

dispute. Each of them makes definite statement of the matter in their respective affidavits. But Guido and his lawyers attempted to show far greater intimacy between them. Arcangeli (B., 94) says: "It is undeniable that the carnal love was reciprocal between them." Guido tried unsuccessfully to establish his claim that the love-letters (cf. Note 232) had been part of this correspondence. He also accused them of clandestine meetings (Note 170). On the face of the facts it does not seem improbable that Guido attempted to drive them together in a criminal intrigue, that he might rid himself of his wife (Note 121), for Guido's first jealousy of Caponsacchi, as told by Pompilia (B., 70), is so utterly unfounded that it may easily have been a part of a deeper plot.

151—RB., II, 780-811:

The occasion of Guido's original jealousy of Caponsacchi is told by Pompilia (B., 70). Cf. RB., VII, 1036-43.

152—RB., II, 805:

And, ever on weighty business, found his steps

Possibly suggested by (B., 70): "And then because the Canon Caponsacchi, with other young men of the place, used to pass before our house."

153—RB., VI, 482:

I told friends—"I shall go to Rome."

Suggested by the real Caponsacchi's words (B., 73): "I had to go to Rome on my own business, and as I told my secret," etc. Cf. RB., VI, 812; VII, 1209-11.

154—RB., VI, 506-7:

In glided a masked muffled mystery,
Laid lightly a letter on the opened book,

B., 73: "Hence a letter, sent to me by Francesca, was brought one day by a certain Maria, then a servant of the Franceschini." At B., 72, Pompilia denies ever having sent a letter to Caponsacchi. Browning explains the difference of assertion (RB., VII, 1105-25). Cf. RB., IV, 1025-6.

155—RB., VI, 485:

"By the mid-March twilight." Browning evidently means to place this incident a few weeks prior to the flight which occurred in latter April.

156—RB., III, 899-901:

That it was not he made the first advance,
* * * * *

Pompilia penned him letters,

This insistence that Pompilia made the first advance is repeated (RB., IV, 967-77; IX, 501). Pompilia herself speaks of having first asked Caponsacchi not to pass along their street (B., 70). Cf. Note 129.

157—RB., VI, 510-19:

This description of the contents of the letter brought by Maria is drawn from contents of the forged love-letters, as will be seen in the subsequent detailed notes. Cf. Caponsacchi's statement as to its nature (B., 74) and his angry rejection of a counter assertion (B., 76).

158—RB., VI, 516-7:

Where the small terrace overhangs a street
Blind and deserted, not the street in front:

Possibly suggested by (B., 81): "Now the street-door is no longer opened, but you might be able to open the back door."

159—RB., VI, 519:

At his villa of Vittiano.

RB., V, 1142:

He's at the villa, now he's back again:

B., 78: "The jealous one is away," and B., 80: "Signor Guido returns Saturday morning." Cf. RB., VI, 591.

160—RB., VI, 528-9:

Then I took a pen and wrote

"No more of this!"

Caponsacchi states his response to the above letter as follows (B., 74): "I answered her that I was unwilling to do anything of that kind, or to expose myself to such a risk." Pompilia (RB., VII, 1121-5) states that a love-letter was delivered to her at this time by Maria, but elsewhere (B., 72) says she had received no letters from Caponsacchi; and Guido's lawyers in their marginal annotation brand this statement as a lie.

161—RB., VII, 1125:

"My idol." Used in one of the forged love-letters (B., 81).

162—RB., VI, 559:

"Myrtilla." The name Myrtillo is found in the letters (B., 77, 82). Cf. RB., VII, 1153; IX, 541.

163—RB., IX, 541:

"Amyrillis she." The name is used repeatedly in the forged love-letters (B., 77, 78, 81, 82).

164—RB., VI, 564:

The Baron's daughter or the Advocate's wife,

In the love-letters, jealous reference is made to rival sweethearts (B., 81).

165—RB., VI, 574:

"At the Ave. Come!" One of the love-letters (B., 81, 82): "Come this evening at seven o'clock." Cf. RB., VII, 1377.

166—RB., VI, 587:

Why the man's away!

(B., 82): "Signor Guido is going out of the city, and will be gone several days."

167—RB., VI, 618:

And so the missives followed thick and fast

Caponsacchi says (B., 74): "She continued making the same request to me, by flinging, from time to time from the window, a note."

168—RB., VI, 642:

Will stick at nothing to destroy you.

Caponsacchi in his affidavit (B., 74) says: "He (Guido) would also be avenged on me."

169—RB., VI, 928-31:

So, he not only forged the words for her
But words for me, made letters he called mine:
What I sent, he retained, gave these in place,
All by the mistress-messenger!

This is Browning's explanation of the apparently irreconcilable clash of statements as given in the above notes. That is, Guido had stood between his wife and Caponsacchi, forging a correspondence by which he hoped to bring them together. He may have practiced this forgery in making up the packet of pretended love-letters. Such a sinister explanation is by no means the result of a prejudice on the Poet's part, but seems justified by the material he had before him.

170—RB., VI, 1674-5:

And what of the clandestine visits paid,
Nocturnal passage in and out the house

RB., III, 1095:

Whither and whence blindfold he knew the way,

Charges of other meetings—clandestine visits of Caponsacchi to Pompilia—are made by Guido's lawyers (B., 11, 93) and are denied by their opponents (B., 62, 146, 198). Cf. RB., IV, 1028-31; V, 1003-5; IX, 559-61. In the last, Bottini gives as usual his sophisticated version and interpretation of the matter.

171—RB., III, 1097-1104:

cites for proof a servant,
* * * * *

A common trull

The testimony of Maria Margherita Contenti is given (B., 93), and was rejected on the ground that she was a harlot (B., 62, 143, 146, 198). Cf. Note 54.

172—RB., VI, 1691-2:

Sub imputatione meretricis
Laborat,—which makes accusation null:

This Latin passage is not found in the Book, but the point of law is made (B., 62, 198). The Poet probably found the words in some old legal authority which he had followed up in one of the numerous citations on the point.

173—RB., V, 56:

Take to the window at a whistle'a bid,

This charge is made against Pompilia by Arcangeli (B., 91, 93), and Bottini makes reply (B., 146).

174—RB., IX, 566-8:

who dared maintain
That midnight meetings in a screened alcove
Must argue folly in a matron—

Bottini carries this sophistry to an even more absurd extreme (B., 149).

175—RB., VII, 1207:

"Now Easter's past." Easter, 1697, fell on April 7, a fact which the Poet had probably ascertained.

176—RB., VII, 1208:

And the Archbishop gets him back to Rome,

The forged letter supposed to be from Caponsacchi (B., 82) speaks of this fact. "Wednesday the Bishop departs with three carriages."

177—RB., VI, 702-4:

"And there at the window stood * * * Pompilia." Caponsacchi (B., 74), speaking of their interview, says: "She being at the window."

178—RB., III, 912-3:

Nor had she ever uttered word to him, nor he
To her till that same evening when they met,

Browning does not use at any point Pompilia's account of her first interview with Caponsacchi (B., 70), as it would have marred the strong emotional tone of Caponsacchi's account of their first meeting (RB., VI, 702-4).

179—RB., III, 916-8:

And she adjured him in the name of God
To * * * bring to pass where, when and how
Escape with him to Rome might be contrived.

The story of their second and more important meeting is told by Pompilia (B., 71). According to this account, Caponsacchi showed considerable reluctance about entering upon the matter. Then follow the significant words (B., 71): "But I implored him * * * and told him it was the duty of a Christian to free from death a poor foreign woman." Browning has given an account of this meeting from the lips of both of them, and to both it was one of the crises of life. Cf. RB., VI, 701-894, and VII, 1404-47.

180—RB., III, 1175-6:

no pretext
For aught except to set Pompilia free.

Caponsacchi's words (B., 74) are: "Accordingly, with this purpose, to free myself from every difficulty and danger, and also to save from death the said Francesca," etc.; and Bottini (B., 61) says it was from mere pity, and her honesty was kept entirely intact. Cf. RB., IV, 996-7.

181—RB., VII, 1459:

Next night there was a cloud came, and not he:

RB., VI, 1065-6:

Why is it you have suffered me to stay
Breaking my heart two days more than was need?

This delay of two days at this critical juncture is told of in the words of Pompilia (B., 71): "But the next day went by and, although I stood at the blinds, he did not give the signal. When the day following had also passed, I spoke to him again as above and complained to him that he had broken the word he had given me." Browning has made this delay of two days take a profound meaning in the life of his hero, a time of rapid growth to the full stature of Christian heroism (RB., VI, 937-1062). But the Poet's Pompilia merely says—forgetting the cruel anxiety of the delay in such peril—

I prayed through the darkness till it broke.

182—RB., VII, 1462:

The plan is rash; the project desperate:

Possibly suggested by (B., 71): "He replied that he did not wish to meddle at all in such an affair, as it would be thought ill of by the whole city"; or by (B., 74): "I answered her that I was unwilling to do anything of the kind, or to expose myself to such a risk." Cf. P., 211.

183—RB., VI, 890:

If I am absent, drop a handkerchief

Pompilia speaks of this signal (B., 71).

184—RB., VI, 1110-1:

This being last Monday in the month but one
And a vigil, since to-morrow is Saint George.

Both Pompilia and Caponsacchi (B., 71 and 74) speak of the flight as beginning the last Sunday night of April (which was April 28), and Caponsacchi says they reached Castelnuovo (B., 74) on the "last evening of the month"—that is, the flight lasted from very early Monday morning, April 29, till the evening of April 30, and they were arrested by Guido the next morning, May 1 (cf. B., 7, and P., 211). The Poet has discarded this date for April 23, St. George's day, in all probability, that he might take advantage of the chance association of his "soldier-saint" with the famous English ideal of Christian knightliness, St. George. Other dates connected with the flight are changed accordingly (cf. Note 28). Cf. RB., II, 889: "One merry April morning"; III, 1065-6, "on a certain April evening, late i' the month."

185—RB., VI, 1078:

"There's new moon this eve." This mere chance remark was evidently verified by Browning, as the supposed date, Sunday, April 22, 1697, was indeed new moon. See the letter of Mr. Barrett Browning (Note 536).

186—RB., VII, 1479-81:

You, whom I loathe, beware you break my sleep
This whole night! Couch beside me like the corpse
I would you were!

Suggested by Pompilia's words (B., 72): "I went to bed with my husband that evening, and when I had assured myself that he was asleep," etc.

187—RB., V, 1012:

"At the seventh hour of night" (B., lxxxix or 74) "alle sett' hore in circa." Cf. also B., 7.

188—RB., V, 1013:

"Later, at daybreak." Pompilia gives the time as "at dawn" (B., 72). Cf. B., 211.

189—RB., V, 1020-3:

But the gates are shut,
In a decent town, to darkness and such deeds:
They climbed the wall—your lady must be lithe—
At the gap, the broken bit . . . —"Torrione, true!"

Evidently based on (B., 7): "As the gates of the City were closed they climbed the wall on the hill of the Torrione, and having reached the Horse Inn outside of San Clemente," etc. Cf. RB., VI, 1080, 1089.

190—RB., V, 1022:

"They climbed the wall." Suggested by (B., 7 and 8): "Climbed the walls of the City."

191—RB., V, 1025:

Clemente, where at the inn, hard by, "the Horse."

B., 7: "And having reached the *osteria dl Cavallo* outside of the gate of San Clemente." This inn is now used as a poor tenement house. Cf. B., 74, and RB., VI, 1082-4.

192—RB., V, 1026:

Just outside, a calash in readiness

B., 7: "Awaited with a carriage (*calesse*) and two horses." P., 211, and RB., II, 945; III, 1087.

193—RB., V, 1028-9:

To gate San Spirito, which o'erlooks the road,
Leads to Perugia.

Caponsacchi says (B., 74): "Turned along outside of the city wall to go to the gate of San Spirito, which is in the direction of Perugia." Cf. B., 7, and RB., VI, 1146-7; II, 956.

194—RB., III, 1128-30:

And so we did fly rapidly all night,
All day, all night * * *
And then another day,

Both Pompilia and Caponsacchi (B., 72 and 74) speak of their flight as uninterrupted save for the necessary stops for eating and changing horses. Browning uses this statement (RB., VI, 1211-2):

"Does it detain to eat?"
They stay perforce, change horses,

The flight lasted from 1 a. m. April 29 to 7 p. m. April 30, a journey of 70 miles in 42 hours, including these stops. Cf. RB., III, 828; V, 1044-5; VI, 1153; IX, 720, 1281.

195—RB., VI, 1275:

When we stopped at Foligno it was dark.

Guido makes the unfounded charge (B., 107) that the fugitives slept together at Foligno. Cf. RB., VI, 1455-6; II, 959.

196—RB., II, 893:

And teeth one mud-paste made of poppy-milk;

Baldeschi says (B., 108) that Guido had told him that Pompilia had mixed an opiate with the wine for dinner to put to sleep himself and all the rest. The fact is also mentioned or discussed (B., 10, 22, 93, 119, 146, 198). Browning refers to it (RB., II, 905; III, 1204-8; IV, 1176-7; V, 989-91, 1038). Cf. also the next note.

197—RB., IX, 625-35:

And do him service with the potent drug

Apology is made (B., 146 and 199) for Pompilia's use of the sleeping potion on the ground that it was a necessary precaution for her flight under fear of death. Browning substitutes for this sophistry the above grotesque subterfuge on the Fisc's lips.

198—RB., II, 894-5:

"His scritoire the worse for a rummage." At B., 72, Pompilia speaks of having taken some money from "*un Scrigno*." Cf. B., 119; RB., IV, 1178; V, 993.

199—RB., III, 1073-4:

clothes and a trinket or two,
Belongings of her own in the old day,—

Pompilia (B., 72): "I took some little things of my own, a little box with many trifles inside, and some money, I know not how much there was. These were my own * * * " Cf. B., 75.

200—RB., V, 992:

* * * rifled vestore-chest,

RB., II, 895-6:

jewelry that was, was not,
Some money there had made itself wings too,—

These charges of serious theft were insisted upon by Guido's lawyers: B., 10, 86, 108, 119, and P., 211. At B., 7 and 8, Guido gives a preposterously long list of clothing, jewelry, and money carried away by Pompilia. As a matter of fact the 47 or 48 scudi found on Pompilia at the time of her arrest were later paid back to Abate Franceschini (B., 176, 211). Bottini (RB., IX, 653-8) makes an ironic excuse for this theft.

201—RB., VI, 2043-9:

There are two tales to suit the separate courts,
* * * —he tells you here, we fled
* * * * * but elsewhere
He likes best we should break in, steal, bear off,

Guido's charge against his wife and Caponsacchi before the Roman Courts was flight from home and adultery: while (B., 7-9) the copy of the proceedings in the Tuscan Court, would indicate that in the latter, the theft was much insisted on. Cf. RB., V, 1906-8.

202—RB., II, 954:

Got horse, was fairly started in pursuit

B., 10, "the wretched husband pursued them." Cf. RB., III, 1209; IV, 1118; V, 1039; and B., 50, 119; and C., 221.

203—RB., VI, 1838-9:

In our whole journey did we stop an hour,
Diverge a foot from straight road

Bottini makes this point (B., lxxii or 61, § *Eaque ulterius*). Cf. B., 179, 196.

204—RB., VIII, 1212-3:

I had thought to own—
Provided with a simple travelling-sword,

Such is Arcangeli's claim (B., 96), and it is refuted by Bottini (B., 150).

205—RB., VI, 1694:

"Borsi, called Venerino." At B., 7, the driver is named in the criminal charge against him in Arezzo as "*Francesco di Gio. Borsi d. Venerino, Garzone d'Agosto*." At B., 62, he is called "*Franciscus Joannes de Rubris*." Cf. B., 74, and RB., IX, 686.

206—RB., VI, 1696:

Deposes to your kissings in the coach.

This charge against the fugitive couple is made (B., 11, 94, 107, 119) and denied (B., 62, 63, 147, 179, 199, and P., 211). The Casanatense pamphlet (C., 221) gives a slightly fuller account.

207—RB., VI, 1698:

After some weeks of sharp imprisonment

RB., IX, 689:

After long rotting in imprisonment,

B., 199, gives this reason for his statement: "Influenced by the tedium of his secret prison, he had been compelled to swear so."

208—RB., VI, 1702-3:

"Was dismissed forthwith to liberty." That he was thus dismissed is seen at B., 8 and 9.

209—RB., IX, 698-701:

That what the owl-like eyes * * *
O' the driver, drowned by driving night and day,
Supposed a vulgar interchange of lips,
This was but innocent jog of head 'gainst head,

This sophistry is first offered by Bottini (B., 147): "Furthermore, there is the possibility to be considered that the jostling together of those sitting in the carriage might have happened from the high speed; and from this fact an overcurious witness might believe that they were kissing each other." This explanation is repeated (B., 179, 199).

210—RB., VI, 1397-1401:

Suddenly I saw
The old tower, and the little white-walled clump
Of buildings and the cypress-tree or two,—
"Already Castelnovo—Rome!" I cried,
"As good as Rome."

RB., I, 507-8:

the wayside inn
By Castelnovo's few mean hut-like homes

Castelnovo, by the accident of Pompilia's failing strength, thus became the scene of one of the most striking incidents of this dark history. The arrival of the fugitives there is continually referred to (B., 72, 74, 119, 174). The version of Book II, 966-7, is more particularly based on the statement (P., 211): "At Castelnovo in the Osteria of the Post." The other descriptions were made by the Poet "with his eye on the object," and are accurate.

211—RB., II, 972:

There did they halt at early evening.

Caponsacchi (B., 75) says: "We reached Castelnovo on Tuesday evening, the last of the said month of April." And B., 94, says that they arrived at about half-past seven in the evening. All other testimony in the Book, save that of Pompilia, agrees with this.

212—

Pompilia, however (B., 73), declares: "I verily arrived at Castelnovo at the blush of dawn." Hence the Poet makes Pompilia say (RB., III, 1140): "In a red daybreak, when we reached an inn." To this evidently mistaken statement, Guido's lawyers make the marginal comment: "The lie concerning the advent at Castelnovo." And this is used to break down the value of her testimony (B., 94). The lawyers on the other side meet this attack by subterfuge (B., 149, 200). The Poet invents his own explanation, which, while not corroborated at any point in the Book, is not refuted by the fact of the Book. This is, that Pompilia fainted away in the evening glow, and when rudely awakened in the glow of the next morning, she was ignorant of the lapse of the hours of night. Note that the Poet repeats this important point. Cf. RB., III, 1188-98; and VII, 1580-4.

213—RB., VI, 1410-12:

Out of the coach into the inn I bore
The motionless and breathless pure and pale
Pompilia,

This passage was probably suggested by the words of Caponsacchi (B., 75): "Then because Pompilia said that she was suffering some pain and that she did not have the courage to pursue the journey further without rest, she cast herself still clothed upon a bed in the chamber."

Cf. B., 199, and RB., IX, 741, where the mean and vicious nature of Bottini is made to reveal itself in speaking of the same fact. Cf. also RB., III, 1142-9; VII, 915-6.

214—RB., VI, 1418:

"Kept watch all night long." B., 148: "Brief stay in that room * * * should be attributed to his guardianship of Francesca Pompilia." Cf. B., 149, 174, 200: "*ad ipsius custodiam vigilante.*" Cf. also RB., IV, 960; VII, 1574.

215—RB., II, 1116:

The night at the inn—

RB., II, 981:

One couch in one room, and one room for both.

In spite of the denial by Pompilia (B., 73) there can be little doubt that the fugitive couple did spend the night together in a chamber at Castelnuovo. Caponsacchi makes his explanation of the matter (B., 75). Guido asserts that they slept together at Castelnuovo. The lawyers discuss the matter pro and con throughout the Book, usually speaking of it as the *condormitio* (B., 11, 62, 75, 94, 119, 141, 148, 149, 174, 180, 199). Cf. RB., X, 659-64.

216—RB., II, 979:

"Upstairs," etc. Probably suggested by Pompilia's reference to an upstairs chamber (B., 73).

217—RB., II, 999-1000:

flung the cassock far,

Doffed the priest, donned the perfect cavalier.

Caponsacchi's use of laic garb during the flight is referred to (B., 94 and 148, and RB., III, 1259-60; IV, 960, 1156; V, 1050-1; VI, 1120, 1465).

218—RB., IX, 735:

Pompilia needs must acquiesce and swoon,

Caponsacchi gives their reason for stopping thus so near their journey's end (B., 75): "Then because Francesca said that she was suffering some pain, and that she did not have the courage to pursue the journey further without rest." And Bottini (B., 149) says: "To refresh her strength, which had been exhausted by the swiftness of journey they had made." Cf. also B., 199, and RB., III, 1187-8, 1231-2; VI, 1408.

219—RB., II, 975-6:

Since in the court-yard stood the Canon's self
Urging the drowsy stable-grooms to haste

RB., VI, 1427-9:

I stood

I' the courtyard, roused the sleepy grooms. "Have out

* * * * *

Carriage and horse, give haste, take gold!" said I.

Cf. B., 149: "The Canon was keeping guard over her and preparing for the continuance of the journey; and so, when the husband arrived, he was attending to this by ordering that the carriage be made ready." And at B., 180, we read: "When Franceschini arrived at the said place he found Caponsacchi urging that the horses be harnessed for continuing the journey." Cf. B., 174, and RB., III, 1197-1201; V, 1052-62.

220—RB., III, 1262-5:

There was no prompt suppression of the man
As he said calmly "I have saved your wife
From death;"

RB., X, 696:

the steadfast eye and quiet word
O' the Canon of the Pieve!

The actual words of Caponsacchi at this meeting as reported (B., 196) have undoubtedly suggested these passages, and they are still convincing evidence of the sterling and manly honor of the real Caponsacchi: "I am a gallant man, and what I have done, I have done to free your wife from the peril of death." Cf. also B., 174; and RB., II, 1010; IV, 1159, 1192-3; V, 1119.

221—RB., II, 1008:

"A wicked-looking sword at side." The Procurator of the Poor (B., 96) implies that the fugitives were provided with fire-arms as well as other weapons, but Bottini (B., 151) claims that Caponsacchi had only a sword, while elsewhere (B., 175, 177) only "*un piccolo spadino*" is acknowledged. Cf. also B., 119; and RB., III, 1260; IV, 1156; VI, 1122, 1466; VIII, 201-15.

222—RB., II, 1021:

So, Guido called, in aid and witness both,

Both the Book and *The Ring and the Book* refer repeatedly to the failure of Guido to take summary vengeance here and to his turning to the law to avenge himself. Guido gives his own defense (B., 107). But his lawyers have hard task to meet the sneers of the Prosecution at this failure of spirit. Cf. RB., II, 1506-24; III, 1268-70; IV, 1120-1212; V, 1068-1117; VI, 1461-71; VIII, 983-95, 1185-7; IX, 1133; X, 697-8; and B., 15, 51, 53, 65, 96, 109, 119, 151, 160, 162, 175, 177.

223—RB., IV, 1126-9:

And never let him * * * plead, * * * honour's wound!

Exactly this point is made by Bottini in his argument against Guido (B., 151).

224—RB., VI, 1511-2:

Detect

Guilt on her face when it meets mine, then judge

Possibly suggested by the rhetorical question (B., 174): "When his wife saw him, did she, timid as she was, shrink back?"

225—RB., II, 1022:

"The Public Force." The police who overtook Guido the night after the murder are called *La Forza* (P., 212). Cf. RB., IV, 1395; VI, 1463.

226—RB., II, 1022:

"The Commissary." The Governor of Arezzo is called *Il Commissario* (B., 42), but P., 211, speaks of "*il Governatore di quel luogo*"; B., 75 and 119, speak of "*la Corte*." Cf. also RB., VI, 1462, and B., 51, 175.

227—RB., II, 1031:

Sprang to her husband's side, caught at the sword

RB., V, 1123-4:

Nay, an alacrity to put to proof
At my own throat my own sword,

RB., VI, 1544-6:

She sprang at the sword that hung beside him, seized,
Drew, brandished it, the sunrise burned for joy
O' the blade,

This incident, which is perhaps the most dramatic of the whole story, is interpreted in various ways in the Book. We read (B., 16): "Whether because of her hatred for her husband, or on account of her anger at the imprisonment of her lover, she drew a sword against her husband in the very presence of the officers who were about to arrest her. And to prevent her from going further, one of the bystanders had to snatch it from her hands." Cf. also B., 96, 110, 119, 150.

Browning's interpretations through the various speakers of the Poem are full of interest—the fierce admiration of Caponsacchi, the grave and earnest approval of the Pope, Pompilia's own linking of the act to her half-conscious mother-sense and to the voice of God, and the Fisc's insincere sophistries should be carefully compared. We have here a good example of Browning's art in adapting one of the acknowledged facts of the story to the various personalities of his speakers. Cf. RB., III, 1161-7, 1290; VII, 1594-1641; IX, 889-925; X, 699-700, 1081-3.

228—RB., II, 1040:

but her tongue continued free:

RB., V, 1120:

She, with a volubility of curse,

RB., VII, 1591-2:

I did for once see right, do right, give tongue
The adequate protest:

The Poet invents words for the situation at RB., III, 1295-9; and VI, 1528-32. At P., 211, we read: "The young woman was not at all terrified at the sight of her husband, but on the contrary she mustered her courage and reproved him for all the cruelties practiced upon her." Cf. B., 174, 175.

229—RB., II, 1044:

"The *sbirri*." Cf. B., 119: "*catturate da i suoi sbirri*." B., 177: "*farli arrestare da sbirri*."

230—RB., V, 1133:

We searched the chamber where they passed the night,

RB., VI, 1555-9:

I begin my search meanwhile

Probably based on Caponsacchi's words (B., 75): "Although in the prison of Castelnuovo, where I was placed, diligent search was made both by the authorities and the husband," etc. Cf. RB., II, 1068-9.

231—RB., II, 1071-4:

Found— * * *
All the love-letters

RB., VI, 1668-9:

the documents were found
At the inn on your departure?

Cf. also III, 1308-11; IV, 1033-42; V, 1132-7, 1874-7. In the Book these letters are variously asserted to have been found in the closet, "*in Latrina*" (B., 61, 197) and in the prison (B., 76, 88, 143).

232—RB., VI, 1650-4:

Then your clerk produced

Papers,

RB., VII, 175-9:

Now, I heard read out in the public Court
Before the judge, in presence of my friends,
Letters

These love-letters were presented as evidence in the adultery trial, *Processus fugæ*, and were reintroduced now in the murder trial and were published in extracts in the summary of evidence for the defense (B., 77-83). They play a very important part in the legal arguments, as will be seen by the following citations (B., 11, 61, 88, 89, 119, 168, 174, 177, 178, 197, and P., 211). The internal evidence against the genuineness of these letters is overwhelming. It is quite inconceivable that their highly conventionalized, pseudo-literary affectation could have been written by an illiterate young girl.

233—RB., II, 1145-7:

Tis forgery * * * the husband's work.

Very naturally and justifiably do the lawyers for the Fisc charge them to the forgery of Franceschini himself. (B., 197): "They might have been framed by the husband." They seem to be a part of his whole cunning, ignoble plot against his wife. Browning has repeated this charge of forgery over and over again (RB., III, 949-52, 1313, 1360-61; IV, 1047-59; V, 1151, 1203-6; VI, 1665, 1801-2; IX, 468, 1150; X, 650).

234—

In the trial for adultery, *Processus fugæ*, both Pompilia and Caponsacchi were questioned as regards these letters, and their replies are found at B., 72, 76.

235—RB., II, 1133-8:

Seeing I have no hand, nor write at all.

* * * * *
* * * she read no more than wrote,

Guido's lawyers brand these statements as lies, and endeavor to prove that she did know how to write (B., 87, 120). Cf. also RB., III, 908-11; VII, 1489-90; IX, 837; and Note 248.

236—

Guido's account of the contents of the love-letters (RB., V, 1141-9) is evidently given by the Poet in close accord with the letters set forth in the evidence, as will be seen by the subsequent notes.

237—RB., V, 1142:

He's at the villa, now he's back again:

Cf. B., 78: "The Jealous one is away"; and B., 80: "Guido returns Saturday morning."

238—RB., V, 1146-9:

"Of all things, find what wine." This is not an exact quotation from any of the letters, but they contain similar passages concerning the dropping of the sleeping potion into the wine (B., 81, 82).

239—RB., V, 1147:

"Sir Jealousy." *Il Geloso* is frequently referred to in the letters (B., 77, 78, 81, 82).

240—RB., V, 1148:

"Red wine." Cf. B., 78, "*vino rosso*" and B., 81, "*è rosso per hora.*"

241—RB., V, 1148-9:

Because a sleeping-potion, dust
Dropped into white, discolours wine

Cf. B., 93: "For in seeking an opportunity to mingle an opiate * * * was inquiring what colored wine they were drinking in the home, lest the color of it, when altered by the drug mixed therewith, might betray their plots."

242—

On the replies of Caponsacchi as to the letters (B., 75-6) the Poet has based his conception of Caponsacchi's reply (RB., VI, 1650-73).

243—RB., VI, 1655-9:

—How was it that a wife, young, innocent,
* * * wrote this page?—
She wrote it when the Holy Father wrote
The bestiality that posts thro' Rome
Put in her mouth by Pasquin:

The question and reply here are suggested by (B., 76): "I marvel that the Fisc pretends that before the flight several other love-letters had been sent me by Signora Francesca; for she was a modest young woman and such actions would be out of keeping with her station and her birth. And, therefore, I declare the abovesaid pretense is false and without foundation." On the above passage was also based RB., II, 1162-4:

Much he repents him if * * *
He coupled her with the first flimsy word

244—RB., VI, 1661-5:

"There's your hand!"
This precious piece of verse, I really judge,
Is meant to copy my own character,
A clumsy mimic; and this other prose,
Not so much even;

These words are evidently suggested by Caponsacchi's reply concerning the letters submitted to him for identification (B., 76): "This letter was not written by me, though the handwriting (*carattere*) of the same has some resemblance to my own. * * * This other letter * * * was not at all written by me and is not in my handwriting. Furthermore it has not the slightest resemblance to my handwriting." Cf. RB., II, 1131; III, 1312-3.

245—RB., II, 1148-9:

he confesses, the ingenious friend,
That certain missives, letters of a sort,

Caponsacchi makes such acknowledgment in his affidavit (B., 75). Cf. RB., III, 927-30; IV, 1050-2.

246—RB., II, 1159-60:

he flung,
Her letters for the flame

RB., IV, 1053:
I burnt because I read.

Probably suggested by Caponsacchi's reply (B., 75): "The letters sent to me, as above, by the said Francesca, were burned by me in Arezzo." There is a similar statement in one of the forged love-letters (B., 79): "I gave them to the flames." Cf. RB., II, 1140; III, 960.

247—RB., IX, 445-8:

"Or the letters * * * Allow them hers." Bottini (B., 61) makes just such an acknowledgment, and then offers excuse: "or she could have made pretense of this to win over the Canon." Cf. B., 145, 146, 148, 178, 197. Cf. lines 473-4.

248—RB., IX, 448-9, 60:

—for though she could not write,
In early days of Eve-like innocence
* * *

May well have learned, though late, to play the scribe:

B., 143: "She could have acquired this skill afterwards because of desperation which sharpened her wits." Cf. Note 235.

249—RB., IX, 461-3:

You thought my letters could be none of mine,
* * *

But now I have the skill, and write, you see!

B., 127: "I sent you word of them on purpose, but you did not believe the letters sent you were in my own hand. I declare that I finished learning how to write in Arezzo."

250—RB., IX, 476-7:

"my life,
Not an hour's purchase," as the letter runs,—

The words are adopted from Pompilia's real letter (B., 127): "My life was not worth an hour"—(*la mia vita era a hore*).

251—RB., III, 957:

There never reached her eye a word from him:

Cf. Pompilia's words (B., 72): "The said Caponsacchi before the said affair did not send me any letter, because I do not know how to read manuscript," etc.

252—RB., IX, 538-45:

To such permitted motive, then, refer
All those professions, else were hard explain,
Of hope, fear, jealousy, and the rest of love!

This excuse for the ardent tone and expression of the love-letters is made by Bottini (B., 146).

253—RB., II, 1135:

What if the friend did pen now verse now prose,

RB., VI, 1662:

This precious piece of verse,

There is no verse in the letters as given in the Book, but the letters which were supposed to have been written by Pompilia speak of certain verses, "*ottave*" (B., 78, 79, 80), and Bottini speaks of "*inhonesta carmina*" (B., 145). Cf. also RB., V, 1140, 1365; and VII, 1152.

254—RB., VI, 1585-7:

they bore me off,
They bore her off, to separate cells o' the same
Ignoble prison, and, separate, thence to Rome.

The fugitive couple were evidently carried first to a prison in Castelnuovo, from which Pompilia's appealing letter to Pietro was written two days later, May 3 (B., 127). But Pompilia's affidavit is dated Rome, May 13 (B., 45).

255—RB., III, 1325:

The captured parties were conveyed to Rome;

B., 175: "They were conducted as prisoners to the Prisons of the Most Illustrious Governor of

Rome." P., 211: "They were taken to Rome and placed in the New Prisons." Cf. RB., II, 1060, 1083; IV, 1121; V, 1175-6; VI, 1587-91.

256—RB., III, 1329-33:

Guido kept out of sight and safe at home:
The Abate, brother Paolo, helped most

* * * pleaded, Guido's representative

At B., 120, we read: "Guido returned to his own country, leaving the conducting of the affair to the Abate, his brother." And P., 211: "To go back to his own country, leaving the care of his case in the hands of his brother, the Abate." Cf. RB., II, 1297-1300; IV, 1303-4.

257—RB., II, 1239-59:

The various accounts of the sneers of contempt which Guido had to bear after his return home seem to give a half-savage ironic delight to the Poet. Cf. RB., II, 625-6; III, 1445-62; IV, 1493; V, 1242-77. To these the Pope adds the final comment of matured spiritual wisdom (RB., X, 710-4):

The furnace-coals alike of public scorn,
Private remorse, heaped glowing on his head,
What if,—the force and guile, the ore's alloy,
Eliminate, his baser soul refined—
The lost be saved even yet, so as by fire?

All of these find foundation in the Book (B., 11): "He was pointed out with the finger of scorn, especially in his own country"; and (B., 16): "he was shut out of the noble company"; and a fuller account of this is found at B., 172. That Abate Paolo came in for his share of scorn may be seen in Note 305.

258—

The enumeration and description of the three suits (RB., IV, 1305-27) follows with considerable closeness the account at B., 169.

259—RB., IV, 1305:

managed the three suits

RB., VIII, 1379:

Three pending suits

Cf. B., 169: "three lawsuits pending." Cf. also RB., III, 1670; IV, 1332; V, 1343, 1442.

260—RB., IV, 1308-10:

First civil suit,—the one the parents brought,
Impugning the legitimacy of his wife,
Affirming thence the nullity of her rights:

Cf. (B., 169): "One as to the legitimacy of the parentage of his wife and the nullification of the dowry agreement." Cf. also B., 10, 50, 118, 144, 172, 194; and RB., II, 600, 726-32; III, 646-51.

261—RB., III, 655:

"And still six witnesses." B., 172: "Conclusive proof was given by six witnesses." Pietro in his will speaks of them (B., 128) as persons worthy of credit.

262—RB., IV, 1311-4:

This was before the Rota,—Mollinè,
That's judge there, made that notable decree
Which partly leaned to Guido, as I said,—
But Pietro had appealed against the same

Cf. (B., 169): "Brought by Pietro in the Tribunal of the Sacred Rota." This case was

originally tried before Judge A. C. Tommati (B., 10, 27, 118, 172; and P., 210), but after his decision (cf. following note), which was partly in favor of Guido, the case was transferred on Pietro's appeal (cf. following note) to the Rota" (B., 172). "Nevertheless, an appeal was taken from that sentence and it was committed to the Sacred Rota before Monsignor Molines." Cf. RB., V, 777-8. "Beside the Tribunal of the Sacred Rota, there exists in the Roman Curia another tribunal which is called the Tribunal of the Signature of Justice. It is a High Court, and a tribunal of last instance, or ultimate appeal." Humphrey, *Urbs et Orbis*, p. 285.

263—RB., II, 742-4:

They would not take away the dowry now
Wrongfully given at first, nor bar at all
Succession to the aforesaid usufruct,

This decision is described (B., 118): "He obtained for Francesca Pompilia a continuance in quasi-possession of her daughtership"; and B., 172, "continuing to Francesca Pompilia quasi-possession of her parenthood." Cf. also B., 27, 50; P., 210; and RB., III, 670-80; IV, 1313.

264—RB., II, 753:

Whence, on the Comparini's part, appeal—

B., 118: "But Pietro appealed from the decree." Cf. also B., 50, 172; P., 210; and RB., III, 681.

265—RB., II, 755:

And so the matter stands, even to this hour,

RB., III, 688:

And so the matter pends, to this same day.

B., 172: "Where it still hangs undecided." Cf. also B., 51; P. 210; and RB., IV, 24-8.

266—RB., IV, 1317-8:

Next civil suit,—demand on the wife's part
Of separation from the husband's bed

RB., II, 1287:

Pompilia sought divorce from bed and board

B., 169: "The second suit was for divorce from bed," etc., and B., 177, "and at instance of the said Francesca before the Vice-Governor of suit for separation from bed," etc. Cf. also B., 51, 100, 114, 154; and RB., III, 1427-38; V, 1247, 1319-21.

267—RB., IV, 1320:

Claims restitution of the dowry paid,

B., 177: "And the recovery of the dowry which had been spent." Cf. RB., III, 1436.

268—RB., IV, 1322:

"The Vicegerent has to judge." Cf. B., 169 and 177, "before Monsignor the Vice-Governor (*Vicegerente*)."

269—RB., IV, 1323-5:

Third and last suit,—this time, a criminal one,—
Guido's complaint of guilt against his wife

B., 169: "The third is a criminal suit as to the pretended adultery, still pending in the tribunal of His Excellency, the Governor." This trial, which is so frequently referred to in the Book as the *Processus fuga*, was the criminal

case brought against Pompilia and Caponsacchi at Guido's demand, on the charge of running away together and adultery. It covered the time from May 13, 1697, the date of Pompilia's deposition (B., 45) till September 24, the date of the judgment against Caponsacchi (B., 83). In this case Caponsacchi and Pompilia were prosecuted by the Fisc and defended by the *Procurator Pauperum*. The evidence and argument of this former case are continually referred to in the Book. Much of the printed evidence of the summaries in the Book, including the affidavits of Pompilia and Caponsacchi, had thus been a part of the adultery trial, for Guido's lawyers do all they can to fix the charge of adultery in the wife, as giving excuse for the murder. Cf. RB., IV, 1213-4.

270—RB., IV, 1326-7:

In the Tribunal of the Governor,
Venturini, also judge of the present cause.

B., 169: "In the Tribunal of his Excellency, the Governor," and B., 22: "in this very tribunal, and by his Honor, Lord Venturini, judge in this present case." Cf. B., 51, 119, 120, 175, 176, 200; and RB., III, 1334; V, 1165.

271—RB., V, 1218-22:

We, for complicity in Pompilia's flight
And deviation, and carnal intercourse
With the same, do set aside and relegate
The Canon Caponsacchi for three years
At Civita

Note that this is a close paraphrase of the actual wording of the decree of Court against Caponsacchi (B., xcix and 83). Browning has taken the words "complicity," "deviation," and "carnal" from his original. This punishment of Caponsacchi is continually referred to in both Poem and Book. Cf. B., 10, 22, 51, 57, 106, 131, 168, 175, 185, 195, 200; P., 211; and RB., I, 1038-9; II, 1177-87; III, 1409-13; IV, 1245-9; VI, 1746; IX, 1518-21.

272—RB., III, 1409-10:

unshent, unshamed,
Unpunished as for perpetrating crime.

The lightness of the above sentence in view of the seriousness of the crime charged is much discussed in the Book. The prosecutors of Guido continually assert that this was because of lack of proof of the adultery (B., 51, 57, 106, 131, 138, 140, 142, 185; and P., 211). But Spredi (B., 106) claims it was because Caponsacchi was a forger. Cf. RB., V, 1899.

273—RB., VI, 2013:

"*Probationis ob defectum.*" (B., 51, 131): "*ob defectum probationis.*"

274—RB., VI, 2017-22:

If the title ran
For more than fault imputed and not proved,
That was a simple penman's error,

When insistence on the above decree was made by Guido's lawyers in attempting to prove adultery, the above retort was given by the Fisc (B., 138) and repeated by the second Anonymous Author (B., 180), and denied by Spredi (B., 106). Cf. RB., IX, 1527-38.

275—RB., IX, 1545-55:

I traverse Rome, feel thirsty, need a draught,
Look for a wine-shop, find it by the bough
Projecting as to say, Here wine is sold!"
* * * but what sort of wine?

* * * * *
That much must I discover by myself.
* * * * *

Exactly so, Law hangs her title forth,

This figure of speech regarding the wine-bush is borrowed directly from the second Anonymous Writer (B., 180): "And if one will only give it due thought, the title of that case was placed there, just as a wine-bush hangs outside the door of an inn, which very well shows that they sell wine there, but does not prove whether what they sell is good and salable and agreeable. Oh! by no means. For one may find the wine there to be sharp and muddy, and of other inferior qualities."

276—RB., IV, 1241-3:

For the wife,—let her betake herself, for rest,
After her run, to a House of Convertites—
Keep there, as good as real imprisonment:

B., 175, gives us the following account of the manner in which the case against Pompilia ended: "The case was left undecided as regards the wife, who was placed in the nunnery of the Scalette as a prison." (Cf. B., 121, 181; and P., 211.) This was not a punishment, but merely a continuance of the accused in custody. The *Conservatorio di S. Croce della Penitenza alla Longara* was an institution for penitent women, founded in 1615 on Via della Longara. It is also called *delle Scalette* because of two small staircases leading to the monastery and adjoining the church. It is sometimes spoken of as *del Buon Pastore*. (Moroni, *Dizionario di erudizione*, etc., vol. 17, p. 20.) Browning mistakenly identifies the Scalette with the Monastery of St. Mary Magdalene of the Convertites in the Corso. It was the latter institution which brought suit to win Pompilia's property (Note 364). (Cf. B., 202.) This act of the Court as to Pompilia is also referred to at B., 10, 51, 97, 121, 126, 175, 181; P., 211; and RB., II, 1197-9; III, 1405-6, 1491; V, 1223-5, 1917-8; VII, 1649-53; VIII, 1064; IX, 1195-1202; X, 706-7.

277—RB., II, 1198, and IV, 1242:

"The Convertites." Browning merely anglicizes the word *Convertitæ* found at B., 126, 202, and elsewhere.

278—RB., II, 1231:

"In Via Lungara." This place of Pompilia's detention is spoken of at P., 211, as "the monastery of the Scalette on the Lungara."

279—RB., III, 1492-4:

for Guido's sake
Solcily, what pride might call imprisonment
And quote a something gained, to friends at home,—

This is the explanation of the sentence against Pompilia as given by the second Italian Pamphleteer (B., 175): "Giving some satisfaction to the Franceschini brothers in their strong insistence than because of the obligations of justice." Cf. RB., VI, 2016.

280—RB., IV, 1331-7:

For, Paolo, knowing the right way at Rome,
Had, even while superintending these three suits

* * * * *
Ingenuously made interest with the Pope

RB., VIII, 1398-1408:

That we prayed Pope *Majestas'* very self
* * * * *

Grant there assemble in our own behoof
A Congregation, a particular Court,
* * * * *

To hear the several matters in dispute.—
Causes big, little and indifferent,
Bred of our marriage

Abate Paolo, harassed by the burden of his lawsuits, had evidently tried to use the influence of patrons to help him secure a declaration in his favor (B., 121): "The Abate, seeing the cause unduly protracted, had just grounds for placing it at the feet of Our Lord [the Pope] with a memorial in which he declared that he could no longer endure such important and such various litigation and vexation arising from that luckless marriage, and he prayed that a special sitting (*Congregatio*) be appointed for all the cases—that is, the ones concerning her daughtership, her flight, her adultery, her dowry, and others growing out of the marriage." For the interpretation of this act by the other side, see B., 175, 178, 183. Cf. RB., III, 1331-2, 1469-74, 1671; V, 1347-51, 1752-5.

281—RB., VIII, 1425-6:

Returned us our petition with the word
"Ad *judices suos*," "Leave him to his Judge!"

The Pope evidently refused to interfere with the action of the courts and replied (B., 121): "The matter rests with the judges." Cf. B., 175, 183; and RB., V, 1760.

282—RB., III, 1495:

This naturally was at Guido's charge:

There seems to have been some dispute between the Comparini and the Franceschini as to which of the two should pay Pompilia's expenses while thus shut up in the Scalette (B., 51). The expense was finally met from money taken from Caponsacchi at the time of his arrest at Castelnuovo (B., 125, 176).

283—RB., III, 1500-6:

The convent's self makes application bland
That, since Pompilia's health is fast o' the wane,
She may have leave to go

The Anonymous Author (B., 121) states the matter as follows: "The nuns did not wish for her confinement to take place within their walls and therefore a pretext was found for removing her on the grounds of the said obstruction, and the necessity of removing it." Cf. RB., II, 1325-38; V, 1327, 1470-5; B., 10, 97, 165, 175, 181, 185; and P., 211; while B., 51, gives the disagreement as to bearing Pompilia's expenses as the reason.

284—

On October 12, 1697, Pompilia, for the reason given in the above note, was transferred to the home of the Comparini, which was to be strictly kept as a prison, under a bond of 300 scudi. (Cf. the decree as given in B., clv.) The fact is

continually referred to in Book and Poem. Cf. B., 10, 16, 51, 57, 61, 97, 121, 175, 181, 184, 185; P., 211; and RB., III, 1500-14; IV, 1350-1, 1518-9; V, 1328, 1473-6; VII, 318; IX, 1213-26.

285—RB., II, 1323:

"After full three long weeks." In thus counting the length of the imprisonment of Pompilia, *Half Rome* evidently counts from September 24, the date of the condemnation of Caponsacchi (B., xcix or 83) which, however, is not necessarily identical with the time of Pompilia's transfer from the prison to the Convent, to October 12, the date of the transfer to the home of the Comparini (B., 127). But RB., III, 1490, speaks of five months in the Convent, based partly on the "*alcuni mesi*" of B., 121, and partly on the thought that Pompilia had been in the Convent practically since she had been brought to Rome as prisoner early in May. RB., IX, 1227, speaks of six weeks, for which there is no basis.

286—

"*Domus pro carcere*." This technical designation of the home of the Comparini is found in the decree of transfer (B., 127) and is often repeated throughout the Book. Cf. RB., II, 1342; III, 1514; VIII, 1264; IX, 1225.

On this fact was based one of the aggravating circumstances of the murder; namely, that in the slaughter of persons under custody the authority of the State was treasably insulted. Cf. Note 420.

287—RB., III, 1509-11:

Oh, and shift the care
You shift the cost, too; Pietro pays in turn.
And lightens Guido of a load!

At B., 139, 176; and P., 211, we find that Pietro Comparini now definitely relieved the Franceschini from longer bearing the expense of Pompilia's maintenance, over which the two parties had formerly quarreled (B., 51). Cf. C., 221.

288—RB., III, 1519:

He authorized the transfer, saw it made

This reference to Abate Paolo is repeated at RB., VIII, 1266-7, and elsewhere in the Book (B., 16, 51, 55, 97, 125, 139, 152, 157, 165, 176, 181; and P., 211).

289—RB., V, 1329-30:

No-parents, when that cheats and plunders you,
But parentage again confessed in full,
When such confession pricks and plagues you more—

RB., II, 1350-4:

Theirs who renounced all part and lot in her
So long as Guido could be robbed thereby,

The Book presents such shuffling with the fact of their parentage at B., 17, 126.

290—RB., III, 1520:

"Two months after" Pompilia was transferred to the Comparini home, October 12 (Note 285), and gave birth to her child December 18 (Note 299).

291—RB., VIII, 1267-8:

did we make such grant,
Meaning a lure?

This very point is made by Arcangeli (B., 17): "Since Guido could make that pretense to gain the opportunity of killing her," etc. Cf. Note 502.

292—RB., V, 1335-7:

But a certain villa smothered up in vines
At the town's edge by the gate 't the Pauline Way,
Out of eye-reach, out of ear-shot, little and lone,

This home of the Comparini, in which Pompilia spent the last two months of her life, was probably situated on Strada Paolina in the heart of the City. B., 127, speaks of the Comparini home as on Via Paolina, but the record of the death of Pompilia in the register of San Lorenzo in Lucina (cf. Note 24) gives her home in Strada Paolina. This is also much more in accord with the exhibition of the corpses in the particular church, the parish Church of San Lorenzo. But Browning uniformly locates the home on the Via Paolina, outside the City walls in the Pauline district. I see no valid artistic reason for such a change; it was probably a misunderstanding of the fact. Cf. RB., I, 604-5; II, 206-7, 476, 1361-6; III, 1507, 1596; IV, 1369; VII, 218; XI, 1277.

293—RB., II, 1368-9:

where perchance
Some muffled Caponsacchi might repair,

The utterly unsubstantiated charge that Caponsacchi had clandestinely visited the Comparini home after the decree of banishment against him is first made in the rhetorical question of Arcangeli (B., 19): "And I wish I could say that her love affairs with the banished one were not continued." Cf. also B., 55, 122, 181; and RB., III, 1607-14; V, 1338-41; IX, 1246-60.

294—RB., IV, 1509-17:

There was a sentence passed at the same time
By Arezzo and confirmed by the Granduke,

—Condemns the wife to the opprobrious doom
Of all whom law just lets escape from death.

The Stinche, House of Punishment, for life,—

The fact of this condemnation of Pompilia in the Tuscan Courts is given in the written transcript of the report of the trial at Arezzo (B., v-viii). At B., 8: "The second Accused (Pompilia) is condemned to the penalty of Stinche for life." Cf. RB., V, 1903-13; VI, 2056-8; XI, 1663-9; XII, 719-23. But the Pope's words regarding it are perhaps very near to the feeling of the Poet in the matter (RB., X, 834-40):

that strange shameful judgment, that
Satire upon a sentence.

295—RB., VI, 2037-8:

With Guillichini; he's condemned of course
To the galleys,

Guillichini, who was made a party to the above Tuscan criminal trial, was likewise condemned (B., 8) "to the galleys * * * for five years." Cf. Note 146 and RB., XI, 1666-7.

296—RB., XI, 1665:

One week before I acted on its hint,—

RB., VI, 2040:

A fortnight since

B., 9, gives the date of this sentence as December 24, 1697. Guido is supposed to have started for Rome immediately thereafter.

297—RB., II, 1282-5:

And institute procedure in the courts

* * * * *

He claimed * * * divorce

There is no evidence that Guido actually brought a divorce suit, although he evidently sought counsel on his right to such divorce, as he stated in RB., V, 1809-12:

I wished the thing invalid, went to you
Only some months since, set you duly forth
My wrong and prayed your remedy, that a cheat
Should not have force to cheat my whole life long.

For at B., 118, we read: "But the Franceschini were able to restrain themselves from due resentment in the hope that if Francesca Pompilia were not the daughter of Pietro and Violante, as was supposed at the time of the espousal, the marriage might be annulled and they might thus purge themselves of such a blot on their reputation. Witnesses of this feeling are found in the many authorities and experts who were requested by the Franceschini to give thought to that point and express their opinion of it. But as these did not agree, the Franceschini were unwilling to commit themselves to so doubtful an undertaking," etc. Cf. B., 120; and RB., III, 1480; V, 1247-51, 1295-1301.

298—RB., V, 1308-18:

you err
I' the person and the quality—nowise
In the individual,—that's the case in point!

Such is the very point made (B., 98): "As long as he had any hope that he might have the marriage annulled because of the mistake concerning the person married. For he was ignorant of the point of Canon Law that error as to the nature of the person contracted does not render a marriage null, but only an error as to the individual."

299—RB., II, 1383:

Gave birth, Sir, to a child, his son and heir,

B., 122: "During the month of December, Pompilia gave birth to a boy in the home of the Comparini." B., 151, gives December 18 as the date. Cf. also P., 211; and RB., IV, 1352; V, 1436-68; IX, 1309-10.

300—RB., V, 1469:

Lawful,—'t is only eight months since your wife
Left you,—

That is, from April 28 to December 18. Cf. RB., I, 792; VI, 35.

301—RB., V, 1470-1:

your babe was born
Last Wednesday in the villa,—

P., 211, says: "Which was Thursday," referring to January 2d, the date of the murder; but this was just two weeks later. Cf. Note 303.

302—RB., II, 1384:

"Caponsacchi's son." Arcangeli makes an implication of such a charge (B., 10): "Would that he had not been conceived in adultery!" Cf. RB., V, 1498; 1530-1; VIII, 370; IX, 1370.

It is well to note in this connection that both Pompilia and Bottini suggest immaculate conception; Pompilia at RB., VII, 1762-4, with devout

reverence for the story of the Mother of Christ, and the Fisc, RB., IX, 1341-66, suggests it with cynical irony. Cf. Note 22.

303—RB., I, 405:

The wife's two-weeks' babe,

This oft-repeated age of the child is correct to the day, December 18 to January 2. Cf. RB., I, 799; III, 31, 1605; VII, 14, 94, 133, 1681, 1686, 1755.

304—RB., III, 1540-1:

"I shall have quitted Rome ere you arrive
To take the one step left,"—wrote Paolo.

Abate Paolo's departure from Rome is spoken of (B., 26, 122; and P., 211); but (B., 177) we have the definite accusation: "He left Rome to take part in the planning of that notorious murder." Cf. RB., IV, 1356-7; X, 893-4.

305—RB., V, 1366-73:

Paul, finally, in such a state of things,
After a brief temptation to go jump
And join the fishes in the Tiber, drowns
Sorrow another and a wise way:

* * * * *

Leaves Rome,

Notice that this passage is a free, ironic paraphrase of (B., 122): "Until he felt very much inclined to throw himself into the river, as he indeed declared to all his friends. And to free himself from such imminent danger he decided to abandon Rome, the Court, his hopes and possessions, his affectionate and powerful patrons," etc. Cf. B., 182, and the fuller account C., 221, which tells that Abate Paolo lost his post as Secretary of the Knights of Malta in consequence of this disgrace.

306—RB., II, 1389-90:

Why, the overburdened mind
Broke down, what was brain became a blaze.

This account of the effect which the news of the birth of the child had upon Guido was evidently suggested by the magniloquent account of the Anonymous Author (B., 122) and repeated ironically by Browning, VIII, 601-11. Cf. B., 11: "Anger so impelled the luckless man to fury, and his indignation so drove him to desperation." Cf. also RB., IV, 1521-4; V, 1483, 1661-4.

307—RB., III, 1546-69:

By an heir's birth he was assured at once
O the main prize, all the money in dispute:

This more sinister view of the effect of the news of the birth of the child upon the father is definitely asserted by Bottini (B., clxxxiv or 151) § *Dilatatio pariter*. Cf. RB., IV, 1104-6; X, 752-74.

308—RB., IV, 1354:

First comes this thunderclap of a surprise:

Possibly suggested by "*Attonito allora il Franceschini*" (P., 211).

309—RB., V, 1478:

And he's already hidden away and safe

B., 129, speaks of the child having been hidden away with a nurse. Cf. also B., 19, 201, 203; C., 222; and RB., VII, 42, 48-9, 205-7.

310—RB., II, 1391-3:

(that first news
Fell on the Count among his vines, it seems,
Doing his farm work.)—why, he summoned ateward.

Possibly suggested by (B., 107): "While we were staying at the said vineyard," or (B., 108): "In presence of the keeper of the vineyard" (*vignarolo*).

311—RB., XI, 1888-9:

Look at those four young precious olive-plants
Reared at Vittiano,—

B., 107: "The Santi above named was a laborer of mine at my Villa of Vittiano." This is the only point at which the name of the villa is given, though there is mention of the villa in the forged love-letters. Browning uses the name repeatedly (RB., III, 311, 1575; IV, 1360; V, 364, 1550-1; VI, 519, 591). That the negotiations between Guido and his hirelings took place at this villa is indicated by their sworn testimony (B., 107). The supposed reply of these laborers given by the Poet (RB., V, 1556-60) was evidently suggested by the words at B., 107. A fuller account of the hiring of these assassins is given in the Casanatense pamphlet (C., 222).

312—RB., II, 1394:

"Four hard hands." The names and homes of these four assassins are given at B., xxv, and again at B., lxii. Cf. RB., X, 777-8.

313—RB., V, 1566:

Took whatsoever weapon came to hand,

Probably meant as Guido's justification for the fact that he was bearing illegitimate arms. Cf. Note 413.

314—RB., V, 1567-8:

And out we flung and on we ran or reeled
Romeward. I have no memory of our way,

Possibly suggested by (B., x or 11): "*obcaecata mente iter arripuit*."

315—

Biagio Agostinelli, who had no hand in the killing, but only stood guard at the outer door (B., 187, and P., 212), was exempted from the re-examination under the torture of the vigil (B., 105, 114). A fragment of his testimony is given (B., 108).

316—RB., IV, 1361:

Comes to terms with four peasants young and bold,

Some discussion is given in the Book to the question whether Guido had the right to hire assassins (B., 15, 26, 33). Browning has the Pope lay far more stress on this phase of the matter in his strong condemnatory words (RB., X, 931-63). Something of these negotiations are given by Guido and his associates in their testimony (B., 107-8). Cf. C., 222; also RB., IV, 1557; VIII, 1500-8.

317—RB., III, 1582-3:

And so arrived all five of them, at Rome
On Christmas-Eve,

P., 211: "On Christmas-eve reached Rome." The Poet repeats this fact with various interpreta-

tions at RB., IV, 1363; V, 1581-1610; VIII, 365-381, 1071; and closes with the Pope's protests against the desecration of the sacred season (RB., X, 788-90).

318—RB., III, 1584-5:

Installed i' the vacancy and solitude
Left them by Paolo,

P., 211: "He stopped at Ponte Milvio, where there was a villa of his brother, and there he remained in hiding with his followers until a time opportune for the execution of his designs should come." Browning refers to this delay of nine days at RB., IV, 1364-6; V, 1588-1610; VIII, 1073-90. The last is the sophistical interpretation of Arcangeli; but the second, which presents the cunning self-justification of Guido, is even more interesting.

319—RB., III, 1592-3:

"But, two, proceeded the same bell." The fact that the murder was committed on January 2d, is mentioned (B., II, 50, 151; and P., 211). Cf. RB., I, 606, 795.

320—RB., IV, 1371:

"Tis one i' the evening." Browning here takes not merely the fact but the form of expression, an Italianism, from the Book (B., lxii), "*hora prima noctis*," and P., 211: "*un' hora circa di notte*."

321—RB., V, 1628-33:

The name, * * * I knocked, pronounced
Caponasacchi

This fact that Guido used the name of Capon-
sacchi and pretended he brought a letter from
the Canon is often repeated and interpreted in
the Book (B., II, 19, 51, 99, 122, 153, 165, and
P., 212). C., 222, gives a fuller account of this
incident. Browning repeats the fact many times
in the Poem, with various interesting comments
by the speakers (RB., I, 395-8, 619-24; II, 1406-
31; III, 1597-9; IV, 1371-2; VII, 59-60, 219).
But most interesting of all is Pompilia's word,
VII, 1808-14:

It was the name of him I sprang to meet
When came the knock, the summons and the end.

Browning spurns all apology for what might
seem compromising; in fact he is too proudly
confident of the purity of Pompilia, we might
say defiantly confident.

322—RB., II, 1435:

And wiped its filthy four walls free at last

Possibly suggested by the rhetorical flourish of
the Anonymous Writer (B., 123). To this there
is a contemptuous retort (B., 181).

323—RB., III, 1620-1:

"Come in," bade poor Violante, * * *
* * * that death was the first,

P., 212: "He leaped upon Violante Com-
parini, who had opened it, and struck her dead
to the ground." Cf. B., 10, 51, 99, 153; C., 222;
and RB., IV, 1373-4, 1576; V, 1649-60.

324—RB., III, 1622-3:

Pietro * * *
Set up a cry—"Let me confess myself!"

P., 212: "Comparini * * * who * * * cried
'confession.'" Cf. RB., IV, 1377-9; XI, 471-4;
and C., 222.

325—RB., IV, 1382:

Pompilia rushes here and there

P., 212: "Pompilia * * * extinguished the light,
hoping thus to escape the assassins, and ran to the
neighboring door of a locksmith, crying out for
help. But when she saw that Franceschini was
provided with a lantern, she went to hide under
the bed," etc. Cf. also B., 51.

326—RB., VII, 38:

"Twenty-two dagger-wounds." P., 212: "She
was barbarously slain with twenty-two wounds."
C., 222, gives further details of the murder.

327—RB., IV, 1385:

He lifts her by the long dishevelled hair,

B., 182: "Taken her by the tresses and lift-
ing her from the ground." Cf. C., 222.

328—RB., IV, 1390:

"On dead Pietro's knees," B., lix: "*testa su
le gambe*," and P., 212: "*trasse ai piedi di Com-
parini*." Cf. line 1437.

329—RB., IV, 1435-6:

She bore the stabbing * * *
Without a useless cry,

RB., IX, 1421:

She, while he stabbed her, simulated death,

These are based on (B., 182): "Poor wife
knew by natural instinct how to feign it by her
relaxation." Cf. C., 222.

330—RB., IV, 1391:

"Let us away, my boys!" P., 212: "Let us
lose no time, but return to the vineyard."

331—RB., III, 1627:

The noise o' the slaughter roused the neighbourhood.

P., 212: "When the uproar of this horrible
slaughter was heard abroad people ran thither."
Cf. RB., IV, 1393-4; and C., 222.

332—RB., II, 27:

But she took all her stabbings in the face,

P., 213, says this of Pompilia, not of Violante:
"were so disfigured, and especially the wife of
Franceschini by wounds in the face, that they
were no longer recognizable." Cf. RB., II, 615-6.

333—RB., IV, 1395-6:

Soon followed the Public Force, pursuit began
Though Guido had the start and chose the road:

P., 212: "When the posse (*Forza*) arrived at
the vineyard he found that they were no longer
there, but about an hour ago they had left in the
direction of the highway." Cf. B., 51.

334—RB., XI, 1623-4:

"But, drunk, redundantly triumphant." Pos-
sibly suggested by (B., 11): "His dull and un-
foreseeing mind suggested no way to find a place
of safety." Cf. also B., 123; and RB., V, 1715-9.

335—RB., XI, 1633:

"Therefore, want horses in a hurry." Possibly
suggested by (P., 212): "Franceschini had de-
manded horses with threat of violence."

336—RB., XI, 1641:

"I want hat on head." P., 212: "In his haste Franceschini * * * left his cap."

337—RB., III, 1628-30:

They had forgotten just the one thing more
* * * the ticket, to-wit

Which puts post-horses at a traveller's use:

P., 212: "Which (horses) were denied him, because he lacked the necessary order." Cf. B., 123; and RB., V, 1723-5; XI, 1645; and especially the interesting interpretation by the Pope (RB., X, 821-9), who sees in it the hand of God checking Guido in full career of sin.

338—RB., X, 861-3:

Thy comrades each and all were of one mind,
Thy murder done, to straightway murder thee
In turn, because of promised pay withheld.

P., 213: "They also revealed that they had planned to kill Franceschini himself afterwards, * * * because he had not kept his word to pay them as soon as they left Rome." The Poet sees here, with the eyes of the good old Pope (RB., X, 855-68), that it was God's outstretched hand that had saved Guido from a swift and unrepenting death. Compare with this the sophistical excuse for the fact (RB., VIII, 1589-1601) and Guido's vengeful hatred as aroused by this (RB., XI, 1739-53).

339—RB., III, 1631-4:

So, all on foot * * *
* * * gained Baccano very near,

P., 212: "Hence he had traveled afoot with his companions toward Baccano." C., 222, further states that Guido had desired to part from his fellows, but they would not permit him to do so. Cf. RB., X, 846-7.

340—RB., IV, 1397-8:

So, that same night was he, with the other four,
Overtaken near Baccano,

B., 51: "That same night, they were discovered in the tavern at Merluccia." Cf. P., 212; C., 223; and RB., V, 1670.

341—RB., V, 1674:

On a cloak 'l' the straw which promised shelter first,

B., 11: "Resting on a pallet (*stragulo*)." Cf. RB., III, 1635-6; IV, 1399-1403; X, 849; and C., 223.

342—RB., V, 1675:

"With the bloody arms beside me." B., 51: "With fire-arms and swords still bloody," and P., 212: "On them were found, still stained with blood, those daggers with which they had done the murder." Cf. RB., II, 1438; III, 1638; IV, 1402.

343—RB., V, 1874:

"Found them in flagrant fault." The expression "*in flagranti*" or "*in flagranti delicto*" is used several times in the Book (B., xii, etc.). Cf. RB., II, 385.

344—RB., IV, 1416-24:

Says Guido, "By your leave, I fain would ask
How you found out 'twas I who did the deed?"

* * * * *
"Why, naturally your wife!" Down Guido drops
O' the horse he rode,—they have to steady and stay,
At either side the brute that bore him,

Evidently suggested by (P., 212): "It is told that Franceschini, while making the journey, asked * * * how in the world the crime had been discovered; and when he was answered that his wife, whom they had found still living, had revealed it, he was so astounded by it that he was, as it were, deprived of his senses."

345—RB., II, 1464-5:

Laid by the heels i' the New Prison, I hear,
To bide their trial,

Browning refers to the New Prison as the place of Guido's incarceration (RB., I, 1284; V, 325, 332; XII, 139), though he has no definite authority for this in his source-material. He is confirmed, however, by C., 223. But the Book does speak of the fact that Pompilia and Caponsacchi had been imprisoned there. (Cf. Note 255.)

346—RB., IV, 1405-10:

The only one * * * that suffered aught
* * * * *
Was * * * Patrizi,

This characteristic sneer of Tertium Quid is based on (P., 212): "This arrest indeed cost the life of Patrizi, because having been overheated, and wounded with a slight scratch, he died in a few days."

347—RB., II, 1439:

Haled hither and imprisoned yesternight

Guido and his accomplices were brought back to Rome the evening of January 3, reaching the Prison at 5 p. m. (P., 212).

348—RB., III, 1641:

The wife lives yet by miracle.

Probably suggested by the words of the second Anonymous Writer (B., 182): "A special favor from the hand of the very Omnipotent, who caused the wife to survive for a few days," etc. Cf. B., 51; and RB., I, 1079; III, 7; IV, 1439.

349—RB., III, 9-10:

She prayed Madonna just that she might live
So long as to confess and be absolved;

Founded on (P., 212): "The unfortunate Francesca Pompilia, under the burden of such wounds as those with which she had been cut to pieces, implored the Holy Virgin for the favor of confession and obtained her prayer." Cf. RB., IV, 1425-32.

350—RB., I, 1078-9:

"* * * four-days'-dying; for she lived
Thus long."

Pompilia died on January 6, 1698. This is the supposed date of her monologue, which is spoken during her dying hours. Cf. B., 47; and P., 213.

351—RB., I, 1085:

In the good house that helps the poor to die,—

Browning mistakenly assumes that Pompilia was taken to the Convent of Santa Maria Magdalena of the Convertites in the Corso after the assassination, and there died.

This is probably due to his supposition that a woman of evil life must be under their authority at the time of her death for them to enter such

claim. Such was not the case. (Cf. Note 364.) In RB., III, 37, *Other Half Rome* gives St. Anna's as the place of her death, possibly suggested by the fact that Fra Celestino is spoken of (B., 47) in that way. The entry of her death in the parish register of San Lorenzo in Lucina (Note 24) proves that she died in her own home. Hence the hospital bed and hospital cell of Book III are a violation of historic fact, undoubtedly for considerable artistic gain. The death record (p. 280) runs as follows:

"La Signora Francesca Pompilia Comparini Romana in età di anni dicisette e mezzo figlia dell quondam Signor Pietro Comparini Romano Moglie dell Signor Guido Franceschini di Arezzo di Toscana mori nella Comunione della Santa Madre Chiesa nella Casa dove abitava alla strada paolina ricevè tutti li Santissimi Sacramenti e fu seppellita in questa nostra Chiesa."

352—RB., I, 1087-90:

For friend and lover,—leech and man of law
Do service; busy helpful ministrants
As varied in their calling as their mind,
Temper and age:

Referring to the several persons, priests, apothecary, etc., who testify as to her dying hours (B., 45-8). Cf. B., 136, 182.

353—RB., III, 45-7:

To shrive: 'twas Brother Celestine's own right,
The same who noises thus her gifts abroad.

This refers to the important affidavit of Fra Celestino "the Augustinian Brother" (RB., III, 18-9), which is given (B., 45-6, 47). It was made January 10, 1698, evidently at the request of Pompilia's executor, Tighetti (B., 109, 136). The old Priest speaks with evident emotion and conviction and there can be no doubt of the fact that he was profoundly impressed by the saintliness of the dying girl. The affidavit is the subject of repeated dispute between the lawyers (B., 45, 64, 109, 200). Cf. RB., III, 799-803; VI, 2060.

354—RB., VI, 2061-3:

he confessed, he says,
Many a dying person, never one
So sweet and true and pure and beautiful.

Suggested by the word of Abate Liberato Barberito (B., 48): "I can attest that during the experience I have had, having been four years vicar in the Cure of Monsignor, the Bishop of Monopoli of blessed memory, I have never observed the dying with like sentiments."

355—RB., IV, 1446-9:

So, when they add that her confession runs
She was of widowhood one white innocence
In thought, word, act, from first of her short life
To last of it;

RB., IX, 1437-8:

Admitted not one peccadillo here,
Pretended to perfection,

B., 47: "She always responded that she had never committed any offense against her husband, but had always lived with all chastity and modesty." Cf. B., 63, 136, 182.

356—RB., IV, 1449-50-52:

praying, i' the face of death,
That God forgive her other sins—not this,

Evidently suggested by (B., 47): "She said that God should not pardon her for that sin, because she had never committed it." Cf. B., 64, 136.

357—RB., IV, 1453-4:

So much good,
Patience beneath enormity of ill,

Suggested by (B., 45, 46): "But what is more to be wondered at is that, although she suffered great pain, I never heard her speak an offensive or impatient word nor show the slightest outward vexation," etc.

358—RB., IV, 1455:

"I hear to my confusion." B., 45: "To my own confusion I have discovered and marveled at an innocent and saintly conscience."

359—RB., XI, 1729:

Forgiving me (her monks begin to weep)

B., 45: "May Jesus pardon him, as I have already done with all my heart." And B., 47: "May God pardon him in heaven as I pardon him on earth." Cf. RB., III, 33, 811; VII, 1707-9; B., 65; and C., 223.

360—RB., IX, 1466-73:

'Twas charity, in her so circumstanced,
To spend the last breath in one effort more
For universal good of friend and foe:

* * * * *
Re-integrate—not solely her own fame,
But do the like kind office for the priest
Whom telling the crude truth about might vex,

RB., IV, 1465:

First sets her lover free,

Arcangeli (B., 95) puts this very interpretation on the dying words of Pompilia: "For this kind of exculpation, which is all too much a matter of pretense, might help her companion, just as heretofore she had brought blame upon him."

361—RB., IV, 1470-1:

thus she dies revenged to the uttermost
On Guido,

This very charge is made by Arcangeli (B., 95): "And what is more horrible, that, from the said exculpation, her murderer might be the more severely punished." To this Bottini replies (B., 138): "Nor does the assertion of Pompilia when dying tend principally toward vengeance." Cf. RB., IX, 1476-91.

362—RB., IV, 1478:

Confession of the moribund is true!

Such is the claim of the lawyers for the Fisc (B., 55, 64, 136, 182), and this is refuted by Guido's defenders (B., 95, 109).

363—RB., IX, 1462-4:

Nam in articulo mortis, * * * * *
* * * * *
Nemo presumitur reus esse * * * * *

This exact quotation is not found in the Book, and it was possibly drawn from some other old

authority to which the Poet had made reference in the case. B., lxxvi or 63-4, is perhaps nearest to it: "*assertio in articulo mortis emissa omnem fidem meretur, cum nemo tunc mentiri praesumitur.*"

364—

Within a month after the death of Pompilia the Monastery of the Convertites laid claim to her whole property. The Monastery of Sta. Maria Maddalena delle Convertite al Corso was founded by Leo X in 1520 *pro mulieribus ab inhonesta vita ad honestam se convertentibus* (Bull, May 19, 1520) with the privilege of receiving the property left by bad women who died in Rome, except when these women had legitimate children or had left one-fifth of their property by will to the said Monastery. It ceased to exist as such about the end of the 18th century. (Moroni, *Dizionario di erudizione*, Vol. I, p. 136.) There is therefore no reason for assuming, as Browning does, that these nuns had ministered to Pompilia during her dying hours, and had then turned against her for the sake of securing her property. (Cf. Notes 276, 351.) Lamparelli's argument, pamphlet 17, and the final decree, pamphlet 18, are from this trial. Browning makes both the Pope and Bottini give versions of this (RB., X, 1499-1524; and XII, 672-701). This trial is mentioned (B., 109, 122, 137).

365—RB., IV, 12-4:

Now for the trial * * * to test
The truth, weigh husband and weigh wife alike
I' the scales of law.

That is the trial of Guido and his companions on charge of murder (Note 8). This trial evidently began soon after the murder, as the opening speeches on both sides refer to the "current month of January" (B., 11, 50). Cf. RB., VIII, 22. The last Summary, pamphlet 11, includes an affidavit (B., 127) dated February 9. The closing argument of Bottini, pamphlet 13, makes reference to this Summary. This argument and the closing argument for the defense, pamphlet 16, therefore fall between February 9 and the final date of decision, February 18. This gives foundation for Browning's saying the length of the trial was a month. Cf. RB., I, 241, 819; IX, 132; XII, 425.

366—RB., I, 120:

"*Romana Homicidiorum.*" These words are found on the back of the Book, on the title-page, in the separate file label on the back cover of each of the pamphlets, and as titles for the arguments. The ellipsis is "*causa*," though in the pamphlet-titles it may be "*informatio*," the name used in the arguments in referring to former arguments. The Poet (RB., I, 121) translates it as "Roman murder-case."

367—RB., I, 165:

Twas the so-styled Fisc began,

Possibly Browning was led astray here by the English practice, the Common Law. In this case, which as a matter of course follows the Civil Law, the Roman practice is followed, and Arcangeli

opens the case with the first pamphlet of the Book for the Defense.

368—RB., I, 165:

"The Fisc, the Public Prosecutor." The cases against criminals in the Papal courts of criminal procedure were conducted by the advocates and procurators of the *Fiscus*, or Treasury (the State in English Law). The Poet continually names Bottini by this clipped form of his title, *Advocatus Fisci*. The full title is given in the heading to Book IX, *Fisci et Reverende Camerae Apostolicae Advocatus*, and as such, with due abbreviations, he signs his arguments (B., 67, 158, 166).

369—RB., VIII, 246:

Having the luck o' the last word, the reply!

The last word in fact seems to have been given by Spreti in pamphlet 16.

370—RB., VIII, 275:

There's my subordinate, young Spreti,

Spreti as *Advocatus* was really the official equal of Arcangeli, who was *Procurator*. The following passage makes plain their respective functions: "There is a difference between the advocate and the procurator. The advocate is a man skilled in civil and canon law, who defends causes in writing or by word of mouth, on the point of law, setting before the judges that which is true in law, or best founded in law, or the principles of law which ought to be applied in a particular case. His is the scientific part of the cause, and he speaks only to the point of law. * * * Matters of fact are to be established by the procurators, and it is upon these established facts that the advocate develops his judicial conclusions. Hence it is that the office of advocate in the Roman courts is sometimes exercised by ecclesiastics in laic orders." Humphrey, "*Urbs et Orbis*," p. 428.

371—RB., VIII, 276:

"He'll pant away at proof." Evidently suggested by Spreti's second and most important argument, pamphlet 9, which presents an exhaustive discussion of the proof or fact in the case.

372—RB., VIII, 128:

"*Pro Guidone et Sociis.*" A phrase found in the various file-titles of the arguments for the Defense (B., xxiv; xl; cxxiv; cxi).

373—RB., I, 1053:

"Who, eight months earlier." That is during the *Processus fuga*, which had been begun the preceding May.

374—RB., I, 177:

the so-styled Patron of the Poor,

RB., VIII, 1528-9:

Pauperum Procurator is my style:
I stand forth as the poor man's advocate:

Browning's translation of the official title of Arcangeli, *Procurator Pauperum*, with which he always accompanies his signature. Cf. his full name and title at the beginning of Book VIII and his name VIII, 114, with his signatures to the arguments (B., xxii; xlvi; cxliii).

375—RB., I, 1128:

"Don Giacinto of the Arcangeli." This is the Italian form of Arcangeli's name, and as such he signs himself in the letter (B., 190). The Poet invents the eight-year-old "curly-pate" and names him for the father, who plays with almost exhaustless variation on the child's name—Cino, Cintino, Cinerello, while the Latin form of the name Hyacinthus is used (RB., VIII, 180r).

376—RB., I, 179:

"Too poor to fee a better." Here again the Poet is thinking of the procedure of English courts, where the judge appoints counsel for the Accused when the latter is "too poor to fee a better." But in trial by Civil Law procedure is somewhat different. The State (B., 114), by its officers, conducts not merely the Prosecution, but the Defense as well—it being the theory that it is as much the State's obligation to defend as to accuse those before its bar. Nevertheless Pellegrini speaks of this matter as follows: "This privilege of defense demands that a defender be assigned to the accused, even against his will and when he claims to be quite capable of his own defense. For to a poor defendant an advocate should be deputed at the expense of the court; and to a rich one, or a skilled one in the law, an advocate should be appointed, but at his own expense." (*De Judiciis Ecclesiasticis*, Lib. II, Vol. 4, p. 320).

377—RB., I, 199:

Thus did the two join issue—nay, the four,

There was an advocate and procurator on each side of the case. The Defense in this case is almost equally shared by the two officers, but the Prosecution is largely in the hands of Bottini. Cf. RB., IV, 44-7.

378—RB., I, 213:

Beside, the precedents, the authorities!

Very naturally in these arguments, the citation of law and precedent is very extensive, and this excites the Poet's ironic comment.

379—RB., I, 222:

Solon and his Athenians?

RB., VIII, 570-1:

The Athenian Code, Solon's,

One of the earliest citations in the Book is (B., x) *legibus Atheniensium, et Solonis*.

380—RB., I, 226-8:

Cornelia de Sicariis hurried to help
Pompeia de Parricidiis; *Julia de*
Something-or-other jostled *Lex* this-and-that;

The *lex Cornelia de Sicariis*, the *lex Pompeia de Parricidiis*, and the *lex Julia de Adulteriis* are repeatedly cited in the Book. Cf. RB., VIII, 574.

381—RB., VIII, 572-3:

The Laws of the Twelve Tables, that fifteenth,—
"Romulus"

RB., I, 222-3:

Quote the code

Of Romulus and Rome!

These citations immediately follow the above (B., x): "*in illo rudi saeculo Romuli leg. 15.*" and "*in legibus 12 Tabul.*" There seems to be a mispunctuation at the end of RB., VIII, 572.

382—RB., I, 224:

"Baldo, Bartolo." Both are cited frequently in the Book.

383—RB., I, 229:

"Apostle Paul." Paul is cited (B., 15 and 113). The latter citation is quoted in full. (RB., VIII, 673-9). Cf. Note 483.

384—RB., I, 231:

That pregnant instance of Theodoric,

Given at B., 23, 113. Cf. RB., VIII, 482-7.

385—RB., I, 232-6:

"That choice example Ælian gives." Given at B., 120. Cf. RB., VIII, 512-21.

386—RB., VIII, 328:

Our Farinacci, my Gamaliel erst,

This famous Italian Jurist is repeatedly cited in the Book. It is evident that one of these citations (B., 28) was followed up by the Poet, as he quotes from Farinacci at this point in his description of the torture of the vigil. Cf. notes following and Note 526.

387—RB., VIII, 333-4:

Lasting, as it may do, from some seven hours
To ten;

Farinacci says: "*detinetur per quinque aut per decem horas quandoque etiam paulo plus.*"

388—RB., VIII, 338-43:

"Out of each hundred cases, by
my count,
Never I knew of patients beyond
four
Withstand its taste, or less than
ninety-six
End by succumbing: only martyrs
four,
* * * * *

Farinacci

*ex centum hominibus qui
hoc tormentum passi
sunt, non credo quatuor
aut quinque fuerint
martyres, reliqui vero
confessores.*

Ninety-six full confessors."

389—RB., VIII, 346:

Death on the spot is no rare consequence:

Farinacci, "*et plures ob id mortui fuerunt in ipso tormento.*"

390—RB., VIII, 349-353:

The accomplice called Baldeschi: they were rough,
Dosed him with torture as you drench a horse,
* * * * *

So, two successive days he fainted dead,
And only on the third essay, gave up,

P., 213: "Baldeschi made denial, even though the 'cord' was administered to him twice, under which he swooned. Finally he confessed."

391—RB., VIII, 498-9:

Scaliger,

(The young sage,—see his book of Table-talk)

The Poet did not find this in the Book, but in the explanation of the expression, *castæ apes* in the *Scaligerana* of Joseph Just Scaliger: "*Les abeilles sentent si un homme a couché avec sa femme, indubitablement le lendemain s'il approche il est picqué.*"

392—RB., VIII, 502-3:

I mind a passage much confirmative
I' the Idyllist

There is no such quotation in the Book, nor is there any such passage in the Idyllists. The

Poet in his humorous presentation of Arcangeli makes him confuse his reference.

393—RB., VIII, 666:

"*Honorem meum nemini dabo.*" This pseudo-saying of Christ is found (B., cli or 124). Browning evidently did not know of any source beyond the Book, as he makes the Pope question its authenticity (RB., X, 1986-7). Cf. also RB., V, 1704-5.

394—RB., VIII, 680:

Saint Ambrose makes a comment with much fruit,

This citation, which the Poet in his waggish humor causes Arcangeli to forget, is given (B., 113): "For who does not consider an injury to the body or the loss of patrimony less than injury to the spirit or loss of reputation?"

395—RB., VIII, 811-21:

"Sicily's Decisions sixty-first." This citation is given (B., xxviii or 24): "*Muta dec. Sicilia 61*"—"the husband was condemned to the galleys for seven years. For he had his wife summoned outside the city walls by his son and there had killed her; and afterward her body was found to have been devoured by dogs." Cf. B., 111, for the name Leonardus.

396—RB., VIII, 824-30:

The "fructuous sample" of the Dutch Jurist Matthaeus is given by Spreti as follows (B., 111): "It was decided that the husband had proceeded too treacherously in pretending absence, in taking his brother with him, and in killing with prohibited arms."

397—RB., VIII, 1228-47:

The case from Cæsar Panimolle, not Paniculus as Browning has it, is found (B., 24): "Certain noble young men who had killed their wives, after an interval because of strong suspicion of adultery, were absolved by the Royal Council of Naples in view of the quality of the persons concerned * * * although some * * * were condemned to the oars because of certain mutilations * * * because those who do such things are considered enemies of nature."

398—RB., VIII, 1541-57:

This citation is found (B., 29): "And Castrensis holds * * * that when one is permitted under the statute to take vengeance upon a person who has given him offense, he is also permitted to assemble his friends to afford him aid; * * * a husband who had assembled men to beat one who had wished to shame the modesty of his wife * * * ordered his wife to pretend to give ear, and when the intriguer had come, murder was committed."

399—RB., VIII, 425:

"*Honoris causa.*" This claim is made continually in the Book and is practically the sole defense of Guido. Cf. RB., II, 29; VIII, 1477; and C., 223.

400—RB., VIII, 699-722:

This ironic line of argument from Arcangeli's lips is doubtless suggested by what the real Arcangeli has said without any such irony (B.,

13): "In ancient times, while the *lex Julia* was in force, wives who polluted their marriage bed underwent the death penalty. * * * Likewise it was so ordained in the Holy Scriptures, for adulterous wives were stoned to death. * * * The solace drawn from public vengeance quieted the anger and destroyed the infamy. But now, in our days, there is a deplorable frequency of crime everywhere, as the rigor of the Sacred Law has become obsolete. * * * The husband's condition would indeed be most unfortunate if either he must live perpetually in infamy or must expiate her destruction * * * by the death penalty."

401—RB., VIII, 859:

But why the innocent old couple slay,

Just this turn is given to the argument from time to time (B., 17, 55, 98, 152, 181).

402—RB., V, 2003:

Absolve, then, me, law's mere executant!

Possibly suggested by (B., 23): "Since for a husband to use the sword for the love of his honor is not to overthrow the laws, but to establish them."

403—RB., VIII, 983-95:

We grant you should have killed your wife,
But killed o' the moment,

Bottini (B., 160) says: "I acknowledge that the Accused should be considered worthy of some excuse if he had slain his wife in the act of taking her in flight with the pretended lover. * * * The suspicion of a just grievance * * * excuses the husband * * * whenever he takes vengeance immediately." Cf. B., 119; RB., II, 1488-1503; V, 1068-70, 1878.

404—RB., VIII, 999-1003:

For, wound * * *
My body, and the smart soon mends and ends:
While, wound my soul where honour sits and rules,
Longer the sufferance, stronger grows the pain
Being *ex incontinenti*, fresh as first.

Exactly this point is made by Arcangeli (B., xv, § *Ultra quod*). Cf. RB., IV, 1528-42.

405—RB., VIII, 1003:

"*Ex incontinenti.*" Should be "*incontinenti*" as contrasted with the phrase *ex intervallo*. Both phrases are used continually in the Book.

406—RB., VIII, 1043-53:

This very point of law is made by Arcangeli (B., xv, § *Praterea*).

407—RB., VIII, 1056-70:

This point of law is taken with some intermingling of irony from B., 16.

408—RB., I, 169:

With five . . . what we call qualities of bad,

These aggravating circumstances of the murder are much discussed by the lawyers, and the Poet has made them a feature of Arcangeli's monologue (RB., VIII, 1108-1381), where he follows the order and discussion of Gambi (B., 53-55). The word "quality" is a mere anglicizing of the frequently repeated "*qualitas*" of the Book.

409—RB., VIII, 1119-25:

first aggravation * * *
 * * * * *
 A regular assemblage of armed men,
Coadunatio armatorum, * * *
 Unluckily it was the very judge

B., 53: "The first of these is the assembling of armed men; for according to decrees the Governor of this city," etc. Cf. B., 15, 26, 35, 100, 111, 155, 162.

410—RB., VIII, 1126:

"Four men armed." Cf. B., 53, "even if those assembled are but four." Cf. B., 162.

411—RB., VIII, 1130-8:

This shrewd subterfuge is employed by the real Arcangeli (B., 101) and is refuted by Bottini in turn (B., 155).

412—RB., VIII, 1146-52:

Suppose a man
 Having in view commission of a theft,
 Climbs the town-wall: 'tis for the theft he hangs,
 * * * * *
 Law remits whipping, due to who clomb wall

This is only a humorous adaptation of the point made by the real Arcangeli (B., 101): "Thus if one wishing to commit theft climb over the walls of the city—even though he could commit that deed without the crime of crossing the wall—even then only a single penalty, namely that for theft, is inflicted as the one chiefly in mind."

413—RB., VIII, 1157-64:

Next aggravation,—that the arms themselves
 Were specially of such forbidden sort
 * * * * *
Delatio armorum, * * *
 Contra formam constitutionis, of
 Pope Alexander's blessed memory.

B., 53: "The second quality and circumstance is the carrying of arms contrary to the specification of the Constitution of Alexander VIII." This aggravating circumstance—the use of wantonly cruel arms—is also discussed (B., 31, 36, 67, 101, 124, 156, 163).

414—RB., VIII, 1170:

Such being the Genoese blade with hooked edge

RB., II, 147-8:
 Triangular i' the blade, a Genoese,
 Armed with those little book-teeth on the edge

Evidently based on (P., 212): "Franceschini's dagger was of a Genoese pattern, triangular, and with certain hooks made in such a way that, in wounding, they could not be drawn from the wound without such laceration as to render the wound incurable." Cf. B., 102, and the Pope's indignant denunciation of it, RB., X, 743.

415—RB., VIII, 1176-7:

Then, if killed, what matter how?
 By stick or stone, by sword or dagger,

Arcangeli says (B., 102): "It would have been the very same if they had been slain with the longest of swords, or with sticks, or with stones."

416—RB., VIII, 1190-2:

Through lack of arms to fight the foe:
 We had no arms * * *
 An unimportant sword and blunderbuss,

This point is made by Arcangeli (B., 96), but there the blunderbuss (*archibusiata*), according to Guido's statement, was in the hands of Caponsacchi. Cf. B., 53.

417—RB., VIII, 1250-6:

Third aggravation * * *
 * * * * *
 * * * murdered in their dwelling-place,
In domo ac habitatione propria,

This third aggravation, breaking in upon the sacred precincts of a home with murderous intent, is much discussed. Cf. B., 54, 66, 165.

418—RB., VIII, 1315, 1318, 1320:

Fourth aggravation * * *
 * * * * *
Mutatione vestium * * * *homicidium ex insidiis*

This aggravating circumstance is urged only at B., lxvi or 54: "*cum mutatione vestimentorum, quo casu homicidium dicitur commissum ex insidiis.*"

419—RB., VIII, 1339-40:

Fifth aggravation, * * *
Sub potestate iudicis, * * *

The lawyers evidently considered this circumstance as of great importance. Pompilia was still a prisoner, and therefore in the custody of the State, which was violated by the murder (B., 54, 98, 111, 112, 157, 165).

420—RB., VIII, 1373-6:

Cannot we lump this with the sixth and last
 Of the aggravations—that the Majesty
 O' the Sovereign had received a wound? lo-wit,
Laesa Majestas,

This is not treated by the lawyers as a separate aggravation but three of these attendant crimes—namely, the assembling of armed men, the murder of a prisoner, and murder in anger over a lawsuit, are all of them spoken of as *Laesa Majestas*, or criminal insult to the majesty of the law, or of the authority of the Prince. See especially B., 164. Cf. also B., 54, 66, 135, 154, 165.

421—RB., VIII, 1378:

"*In odium litis.*" To use violence because of anger over a lawsuit was in itself a capital crime, and Guido is charged with this motive in the death of Pietro. Cf. B., 27, 66, 100, 113, 133, 153, 164.

422—RB., VIII, 1521-2:

Reminds me I must put in a special word
 For the poor humble following,

The plea for the fellow criminals is added to several of the arguments, and the third pamphlet is entirely devoted to their case.

423—RB., VIII, 1578-83:

Of the other points that favour, leave some few
 For Spreti; such as the delinquents' youth.
 * * * * *

Two may plead exemption * * *
 Being foreigners,

These points of law, though slightly touched upon by Arcangeli (B., 103), are fully discussed by Spreti in each of his three arguments (B., 31, 114, 187).

424—RB., VIII, 1580-1:

One of them falls short, by some months, of age
Fit to be managed by the gallows;

RB., X, 964:

And none of them exceeds the twentieth year.

Minority is claimed for Domenico and Francesco (B., 187), but this evidently means less than 25. Francesco's age is given (B., 187) as 24. According to P., 213, the others were 22. Cf. RB., X, 2080-1.

425—RB., IX, 1406:

I leave my proper function of attack!

Bottini answers somewhat tartly (at B., 135) this very complaint on the part of Spreti.

426—RB., IX, 569:

So would he bring a slur on Judith's self,

Just such reference to Judith is made by Bottini (B., 61) to which Arcangeli retorts (B., 91). Her example is again cited (B., 179).

427—RB., I, 245-6:

Till the court out all short with "Judged, your cause.
Receive our sentence!"

The formal sentence against Guido and his companions is given in the Book only at B., 193, but the letters (B., 190-1) speak of it. Cf. RB., I, 257: "I learn this from epistles," etc. C., 223, gives an account of the way Guido received this sentence, quite out of keeping with the Poet's conception of the character.

428—RB., I, 274:

Procedure stopped and freer breath was drawn

Evidently suggested by the words of the third letter (B., 191): "At this favorable decision, the defense took heart and Guido's good friends began to breathe again."

429—RB., I, 285:

Even the Emperor's Envoy had his say

Evidently suggested by the second letter (B., 191): "The Ambassador of the Emperor spoke of that point on Tuesday, as he himself told me day before yesterday." Cf. RB., XI, 2279.

430—RB., I, 346:

I find, with his particular chirograph,

Browning merely anglicizes the words of the first letter (B., ccxxxv): "*chirografo particolare*." This of course is utterly unintelligible as English idiom. The words seem to refer to the special writ of condemnation, the order for the execution. Spelled chirograph at RB., XII, 258.

431—RB., X, 212:

I have worn through this sombre wintry day,

RB., I, 1236:

Droop of a sombre February day

Referring to Friday, February 21, the eve of the execution of Guido. Cf. RB., X, 283-5.

432—RB., I, 347-8:

Friday night;

And next day, February Twenty-Two,

This was indeed Friday night, as can be gathered from the second letter (B., 191), where the date of sentence, February 18, is spoken of as

being on Tuesday. (Cf. RB., XII, 245.) Arcangeli's letter (B., 190), written the day of the execution, is dated February 22.

433—RB., XII, 118-23:

no sooner the decree

Gone forth, * * *

Than Acciaiuoli and Panciatichi,

* * * * *

* * * intimate the sentence

P., 213: "They were assisted by Abate Panciatichi and Cardinal Acciajoli." Nicolas Acciajoli was born at Florence on July 10, 1630, became cardinal November 29, 1669, and died February 23, 1719. Bandino Panciatichi, also a Florentine, born June 10, 1629, became cardinal February 13, 1690. For a time he was patriarch of Jerusalem, and at this time was prefect of the congregation of the counsel. They were aged and distinguished ecclesiasts, probably chosen in deference to Guido's rank. They certainly were not the type of men to "crouch * * * two awe-struck figures" (RB., I, 1290-2). C., 224, is likewise at odds with the passion imagined by Browning for his Guido at the hour of death. The Poet's version is in accord with the increase of the terrible in the villainy of Guido. Cf. RB., XI, 1-2.

434—RB., XII, 124:

Were closeted ere cock-crow with the Count.

P., 213: "At the eighth hour (2 a. m.), Franceschini and his companions were informed of their death." Cf. RB., XI, 24.

435—RB., XII, 129-30:

And when the Company of Death arrived

At twenty hours,—the way they reckon here,—

P., 213: "At the twentieth hour (2 p. m.), the Company of Death and of Pity arrived at the Prisons." Cf. RB., I, 1309-19; XI, 2414-5.

436—RB., XI, 32:

And why, then, should I die twelve hours hence?

The "twelve hours" was evidently drawn from the comparison of the times given in the two preceding notes. Cf. line 123.

437—RB., XII, 128:

Were crowned at last with a complete success.

P., 213: "Nor did they delay in preparing themselves to die well." C., 224, gives a much fuller account of this. Cf. RB., XI, 433; XII, 417.

438—RB., XII, 132-4:

The Count was led down, hoisted up on car,

Last of the five, as heinouslest, you know:

Yet they allowed one whole car to each man.

Cf. P., 213: "The condemned were made to go down stairs and were placed upon separate carts to be drawn to the place of execution."

439—RB., XII, 135-7:

His intrepidity, nay, nonchalance,

As up he stood and down he sat himself,

Struck admiration into those who saw.

P., 213: "Franceschini, who showed more intrepidity (*intrepidezza*) and composure (*sangue freddo*) than the others, to the wonder of all." Cf. C., 224, where Guido's attitude is described quite differently.

440—RB., XII, 139-44:

From the New Prisons by the Pilgrim's Street,
The Street of the Governo, Pasquin's Street,
* * * * *

The Place Navona, the Pantheon's Place,
Place of the Column, last the Corso's length,

The Poet merely adopts the statement of the line of march as given (P., 213): "*Partirono dalle Carceri tenendo la Strada del Pellegrino, del Governo, di Pasquino, Piazza Navona, la Rotonda, Piazza Colonna, ed il Corso.*" Cf. RB., I, 1325. C., 224, gives an interesting amplification of this journey to the scaffold, quite different from that at RB., XII, 150-63.

441—RB., I, 1328:

Two gallows and Mannaia crowning all.

P., 213: "A great platform with mannaia, and two great gallows, which had been built for the execution of the criminals." A fuller account is given C., 224. Mannaia is also mentioned B., 124. Browning treats this subject with most graphic and passionate power in the words of Guido (RB., XI, 186-258).

442—RB., I, 350:

Not at the proper head-and-hanging-place

RB., XII, 106:

The substituting, too, the People's Square

P., 213: "On February 22, was seen in the Piazza del Popolo." Cf. RB., X, 2108-11; XII, 146, 311-2; and C., 224.

443—RB., XII, 113-5:

Palchetti were erected in the Place
And houses, at the edge of the Three Streets,
Let their front windows at six dollars each:

Cf. P., 213: "Many stands (*palchetti*) were constructed for the accommodation of those curious to see such a terrible execution, and so great was the concourse of people that some windows brought as much as six dollars." Cf. C., 224.

444—RB., XII, 167:

To mount the scaffold-steps, Guido was last

P., 213: "The first who was executed * * * and the last, Franceschini."

445—RB., XII, 173-91:

P., 213:

As he harangued the multitude
beneath.

He begged forgiveness on the
part of God,

And fair construction of his
act from men,

Whose suffrage he entreated
for his soul,

Suggesting that we should
forthwith repeat

A *Pater* and an *Ave*, with the
hymn

Salve Regina Cæli, for his sake.

Which said, he turned to the
confessor, crossed

And reconciled himself, with
decency,

* * * * *
* * * * * then rose up, as brisk

Knelt down again, bent head,
adapted neck,

And, with the name of Jesus
on his lips,

Received the fatal blow.

The headsman showed
The head to the populace.

Cf. C., 224.

When the last-named had
mounted the platform,
he asked pardon for his sins,

and begged them to pray for
his soul,
adding that they should say

a *Pater*, an *Ave*, and

Salve Regina for him.

When he had made the con-
fessor announce
that he was reconciled,

he adjusted his neck upon
mannaia
and with the name of Jesus
on his lips,
he was beheaded.

The head was then shown to
the people by the execu-
tioner.

446—RB., XII, 198-202:

B., 213:

"He wore the dress he did the
murder in,

He wore the same garb as
when he had committed the
crime;

That is, a *just-a-corps* of rus-
set serge,

that is, a *giustacore* of brown
serge,

Black camisole, coarse cloak
of baracan

black *camiciuola*, coarse cloak
of baracan,

* * * * *
White hat, and cotton cap"

white hat and *cap di cotone*

Cf. V, 1565; VI, 2001; VIII, 1315-7.

447—RB., I, 361:

"All Rome for witness." The second letter says (B., 190): "All Rome was there, as you may believe." P., 213, also speaks of the "great concourse of people." C., 225, says: "Rome has never seen an execution with a greater concourse of people."

448—RB., I, 362-3:

Remonstrant in its universal grief,
Since Guido had the suffrage of all Rome.

The second letter (B., 190) says: "He has been pitied by all gallant men." Cf. RB., XII, 275-6.

449—RB., XII, 272:

Nor shall the shield of his great House lose shine

B., 190: "And his House has lost nothing in the matter of reputation."

450—

The letter of Arcangeli given (RB., XII, 239-88) is merely a close, but humorous paraphrase of the letter of Arcangeli (B., ccxxxv). The original is placed side by side with Browning's version below.

The real letter (B.,
ccxxxv):

Tardi giunsero

le giustificazioni inviatemi da
V. S. Illma

à prò della b. m. (benedetta
memoria)

del Sig. Guido Franceschini,

poche havendo determinato

La Congregazione di Mons.

Governatore

che detto Sig. Guido

fosse Reo di morte

non ostanti le Ragioni deditte

a suo favore

a gran fatica dalla medema

ottenni qualche dilazione per

giustificare

il suo clericato da me allegato

al quale effetto fu spedita staf-
fetta

in Arezzo;

ma giudicando expediente

La Santità di Nostro Signore

il non differire

The letter of the
Poem:

Late they arrived, too late,
egregious Sir,

Those same justificative points
you urge

Might benefit His Blessed
Memory

Count Guido Franceschini now
with God:

Since the Court,—to state
things succinctly,—styled

The Congregation of the Gov-
ernor,

Having resolved on Tuesday
last our cause

I' the guilty sense, with death
for punishment,

Spite of all pleas by me de-
ducible

In favour of said Blessed
Memory,—

I, with expenditure of pains
enough,

Obtained a respite, leave to
claim and prove

Exemption from the law's
award,—alleged

The power and privilege o' the
Clericage;

To which effect a courier was
despatched,

But ere an answer from Arezzo
came,

The Holiness of our Lord the
Pope (prepare!)

Judging it inexpedient to post-
pone

L'esecuzione della sentenza già destinata hebbe per bene con Chirografo particolare derogare ad ogni Privilegio

Clericale, che gli fosse potuto competere,

et alla minorità rispetto à

Franc. di Pasquino

uno de complici;

si che hoggi è stata eseguita la sentenza contro tutti cinque, colla sola distinzione nel genere della morte, havendo il Sig. Guido terminata la sua vita colla decollatione;

Servivà il consolatione à suoi Parenti, et Amici l'esser stato commiserato

da tutti gl'huomini d'honore, e d' à i buoni, ancorche, confessando la mia

debolezza non posso negare di sentirne un infinito Rammarico, attribuendo il tutto al non haver' io saputo rappresentare le sue solide Ragioni.

Compensi il Sig. Iddio questo funesto accidente alla di lui Casa, et al tutti i suoi Amici con copioso felicità, e desideroso della continuazione di suoi comandì, mi raffermo per sempre

451—RB., XII, 363:

And want both Gomez and the marriage-case,

Evidently suggested by the words in the third letter (B., 191): "I may serve your Excellency in the matrimonial case and in the other of Gomez." Cf. RB., XII, 657.

452—RB., XII, 367-8:

"*Adverti supplico humiliter quod.*" Taken from B., xii.

453—RB., XII, 446-9:

That barefoot Augustinian * * *
* * * preached to purpose yesterday

This sermon is purely fictitious so far as the Franceschini case is concerned, but the Poet may

The execution of such sentence

passed,

Saw fit, by his particular

chirograph,

To derogate, dispense with

privilege,

And wink at any hurt accru-

ing thence

To Mother Church through

damage of her son:

Also, to overpass and set aside

That other plea on score of

tender age,

Put forth by me to do Pasquini

good,

One of the four in trouble with

our friend.

So that all five, to-day, have

suffered death

With no distinction save in

dying,—he,

Decollate by mere due of privi-

lege,

The rest hanged decently and

in order. Thus

Came the Count to his end of

gallant man,

Defunct in faith and exem-

plarity:

Nor shall the shield of his

great House lose shine

Thereby, nor its blue banner

blush to red.

This, too, should yield sustain-

ment to our hearts—

He had commiseration and res-

pect

In his decease from universal

Rome,

Quantum est hominum venustiorum,

The nice and cultivated

everywhere:

Though, in respect of me his

advocate,

Needs must I groan o'er my

debility,

Attribute the untoward event

o' the strife

To nothing but my own crass

ignorance

Which failed to set the valid

reasons forth,

Find fit excuse: such is the

fat of war!

May God compensate us the

direful blow

By future blessings on his

family,

Whereof I lowly beg the next

commands;

Whereto, as humbly, I confirm

myself"

have used to some extent passages from medieval sermon literature which he had read.

454—RB., XII, 715-6:

I've a second chance

Before the self-same court o' the Governor

This final suit as to Pompilia's restoration to good name by decree of court was indeed before the same court of the Governor as the runaway and murder cases. Cf. B., 202, and Note 364.

455—RB., XII, 708:

Who but I institute procedure next

Not Bottini, but Gambi instituted procedure against the good fame of the dead Pompilia (B., 202). Cf. RB., I, 1174.

456—RB., XII, 752-67:

The Instrument

Is plain before me, print that ends my Book

With the definitive verdict of the Court,

This is the last pamphlet of the Book, entitled *Instrumentum Sententiæ Definitivæ* (B., cclix), in which the court, presided over by Marcus Antonius Venturinus, *locum tenens* (B., 203) absolutely clears the reputation of Pompilia by a formal pronouncement of court. B., 204: "Proof is not established as regards the pretended adultery, and therefore the memory of the same Francesca should be and is entirely restored to her pristine reputation.

457—RB., XII, 757-67:

B., cclix or 202:

"In restitution of the perfect fame
Of dead Pompilia, *quondam*
Guido's wife,

Latae pro reintegracione famae, & exstimationis quondam Franciscæ Pompiliæ, olim Uxoris quondam Guidonis Franceschini de Areto; necnon absolutivæ ad favorem

And warrant to her representative
Domenico Tighetti, barred hereby,
While doing duty in his guardianship,
From all molesting, all disquietude,
Each perturbation and vexation brought
Or threatened to be brought against the heir
By the Most Venerable Convent called
Saint Mary Magdalen of the Convertites
I' the Corso.

D. Dominici Tighetti uti heredis beneficiati eiusdem Franciscæ Pompiliæ ab omnibus inquietationibus, and molestationibus, vexationibus, & perturbationibus illatis, & inferri comminatis

a Venerabili Monasterio

S. Mariæ Magdalene Convertitarum ad Cursum

458—RB., VIII, 130-5:

This deliberation over phrases for expressing the idea has a minuter irony when studied in the light of the Book. His sneer at the first phrase as commonplace has additional point when we see it was the word of Gambi, one of Arcangeli's opponents (B., lxi). The expression "*taedas jugales celebrare*" is found in Catullus, 64, 302. *Connubio stabili sibi junxit* is indeed "free from modern taint," as it is adapted from Æneid I, 73. The *nupserat sinistris avibus* in which he finally rests is the opening phrase of the first argument of the real Arcangeli (B., ix).

459—RB., VIII, 165-6:

Ha, my Bottini, * * *

How will he turn this and break Tully's pate?

That is, what wretched Latin he will write. This sneer has the more point when we know

that the sentence sneered at is taken from one of Bottini's arguments (B., 142); hence his contempt in "Stupidly put." And the next Latin quotation gives his own words from his third argument (B., 87).

460—

The following notes illustrate in detail the Poet's use of the Latin of the Book in the monologue of Arcangeli. That Browning's modifications may be seen at a glance, the two versions are placed in parallel columns; the Book in the left-hand column, *The Ring and the Book* (Book VIII) in the right-hand column. To facilitate the comparison, italics in the Latin of the Book will indicate words the Poet has omitted in his version, and italics in the Latin of the Poem will indicate words which are somewhat changed from the Book.

461—

B., lxi, or 50: line
in uxorem duxit 130 duxit in uxorem

462—B., lxi or 50:

facti ideo series ita se habet 140 ita se habet ideo series facti

463—

These are the actual opening words of Arcangeli's first argument (B., ix or 10):

nupserat sinistris avibus 142 nupserat, heu sinistris avibus
Dominus Guido *Francischini*, 144 Dominus Guido, nobili genere ortus,
Franciscæ Pompiliæ 145 *Pompiliæ*.

464—

These words of Bottini, at which Arcangeli sneers, are found (B., clxxii, 142):

existimanda sit qualitas con- 167 existimandum
fessionis adjecta,
quod maritus designaverit ele- 168 quod Guido designaverit
menta
d. epistolæ, quæ 169 dictæ epistolæ, quæ fuer-
int
super inducto ab ea calamo, 170 superinducto ab ea ca-
lamo
fuerint atramento notata, 171 notata atramento
quia ipsa scribere nesciebat. 172 quia ipsa scribere nes-
ciebat

465—

The following is the reply of Arcangeli (B., civ or 87) to the above point made by Bottini:

inanis est responsio, 175 inanis est responsio
quod singula elementa dictæ 177 quod singula elementa
primæ epistolæ
fuerant prius designata per D. 179 fuerant per eum prius
Guidonem,
et deinde superinducto per 181 et deinde superinducto
eam calamo
efformata, ut ipsa asserit 183 per eam, efformata, ut
ipsa asserit

466—

This is found in one of the marginal annotations to Pompilia's cross-examination (B., lxxxvi or 72):

cius vir lineabat epistolas 186 vir ejus lineabat epistolam

467—B., lxxi or 59:

fatetur eam conscripsisse 188 fatetur eam scripsisse
ut inquisito obtemperaret 190 ut viro obtemperaret,
apices
eo designante apices, ipsaque 192 eo designante, ipsaque
calamum
super inducente 193 super inducente

468—B., ccxlviii or 195:

ita pariter optime 194 ita pariter
ostendit epistolam 196 epistolam ostendit, me-
dius fidius
non voluntarie, sed coacte 198 non voluntarie sed coacte
scriptam scriptam.

469—

The expression *ignea arma* for firearms is very common in the Book. The passage which seems closest to this fragment is found (B., lxiv or 53):

Francischinus in sequendo 205 Guido Pompiliam
uxorem
armis igneis munitus 207 armis munitus igneis per-
sequens

470—

The following alternative term for firearms is used by Bottini (B., clxxxiii or 150):

arma sulphurea gestante 208 arma sulphurea gestans

471—

The expression for pistol at which Arcangeli sneers is used by Lamparellus (B., ccxvi or 194):

igneo breviori sclopulo eam 210 armatus breviori sclopulo
persequentis

472—B., cxiv or 96:

ense viatorio solummodo 214 ense solummodo viatorio
instructus 215 instructus

473—

This point of law and quotation are made by Arcangeli (B., xi or 11):

ultra quod hic non agitur 442 ultra quod hic non agitur
de probatione adulterii 444 de probatione adulterii
ad irrogandam pœnam, 446 ad irrogandam pœnam
sed ad effectum 448 sed ad effectum
excusandi 449 excusandi
Occisorem, 450 occisorem
et ad illius defensionem 451 et ad illius defensionem
quo casu leviores probationes 453 quo casu levior probatio
exhuberarent 454 exuberaret

474—B., cxxxvii or 113:

adeo ut qui honorem suum 522 adeo ut qui honorem
spernit, 524 spernit
et non curat recuperare 524 et non recuperare curat
se ulciscendo 526 se ulciscendo
nil differat a belluis * * * 527 nil differat a belluis
Quinimo irrationabilior 528 quinimo irrationabilior
ipsismet belluis 529 ipsismet belluis
reputetur 531 reputetur.

475—RB., VIII, 587-681:

Drawn almost entirely from the actual language of various parts of the Book. Even the English passages are usually close paraphrases of the Italian original behind them. The Poet frequently follows his text so closely as to use etymological equivalents wherever possible.

476—

The following quotation from St. Jerome, which the Poet gives partly in Latin and partly in English, is found (B., cl or 123):

ubi honor non est 587 ubi honor non est
ibi contemptus est: ubi con- 588 ibi contemptus est; and
temptus, 589 where contempt,
ibi injuria frequens; and
ubi frequens iniuriæ: ubi ini- 589 ibi injuria frequens; and
uria, 590 where that,
ibi et indignatio: * * * ibi et indignatio;
ubi indignatio, ibi quies 591 And where the indigna-
tion, ibi quies
nulla: ubi quies non est, 592 Nulla: and where there
is no quietude
ibi 593 ibi
mens a proposito sæpe delicitur 595 mens a proposito sæpe
delicitur

477—

The following quotation and citation from Gregory is drawn from B., cxxxvii or 113:

| | | |
|-------------------------------|-----|--|
| cum difficilium sit | 597 | quam difficilium sit |
| iram cohibere, | 598 | iram cohibere |
| quam miracula facere; | 599 | quam miracula facere |
| ut inquit D. Gregor. dial. I. | 600 | So Gregory smiles in his First Dialogue. |

478—

The following magniloquent passage from the first Anonymous Writer is ridiculed by his opponent later on. Browning merely translates it and fits it to blank verse (B., cli or 124):

| | | |
|--|-----|---|
| e in vero un'animo ingenuo, e che fa stima del suo honore, e della sua riputazione, ogni qual volta resta offeso atrocamente in parte cotanto sensibile, e cotanto delicata, ogni qual volta giunge al termine de furore, e della disperazione, perduto ogni lume di ragione, come delirante, e frenetico, non puole appagarsi, nè meno se giugnesse a sconvolgere, quando li fosse possibile, i Cardini dell'Universo per annihilare non solamente gli Autori, ma ancora il luogo, e la memoria de suoi scornii, e de suoi vituperi, quia zelus, et furor viri non parcet in die vindictæ, nec acquiescet cuiusquam precibus, nec suscipiet pro redemptione dona plurium. | 601 | * * * the ingenuous soul, the man |
| | 602 | Who makes esteem of honour and repute, |
| | 603 | Whenever honour and repute are touched, |
| | 604 | Arrives at term of fury and despair, |
| | 605 | Loses all guidance from the reason-check: |
| | 606 | As in delirium or a frenzy-fit, |
| | 607 | Nor fury nor despair he satiates,—no, |
| | 608 | Not even if he attain the impossible. |
| | 609 | O' return the hinges of the universe |
| | 610 | To annihilate—not whoso caused the smart |
| | 611 | Solely, the author simply of his pain, |
| | 612 | But the place, the memory, vituperi, |
| | 613 | O' the shame and scorn: quia, * * * * * |
| | 617 | zelus et furor viri |
| | 618 | non parcet |
| | 619 | in die vindictæ |
| | 620 | nec acquiescet |
| | 621 | cuiusdam precibus,—nec suscipiet, |
| | 622 | pro redemptione |
| | 623 | dona plurium. |

479—

Notice the literality of the production of the citation of Solomon included in the midst of the preceding passage (B., cli or 124):

| | | |
|--|-----|---|
| come parla in questo proposito lo Spirito santo per bocca di Salomone nei Proverbi al 6. in fine | 613 | "says Solomon, |
| | 614 | (The Holy Spirit speaking by his mouth |
| | 615 | In Proverbs, the sixth chapter near the end)" |

Cf. RB., I, 229.

480—

The quotation from the letters of St. Bernard follows the above in the text of the Anonymous Pamphlet (B., cli or 124):

| | | |
|---|-----|---|
| al che molte bene conferisce quello, che dottamente scrive San Bernardo in Epistol. | 626 | Whereto, as strangely consentaneous here, |
| | 627 | Adduce Saint Bernard in Epistle writ |
| ad Robert. Nepot. suum in princip. | 628 | To Robertulus, his nephew: * * * |
| Dolor quippe nimius non deliberat, non verecundatur, non consultit rationem, non metuit dignitatis damnum, legi non obtemperat, iudicio non acquiescit, modum ignorat, et ordinem | 629 | Dolor quippe nimius non deliberat, |
| | 631 | non verecundatur, |
| | 632 | non consultit rationem, |
| | 633 | non dignitatis metuit |
| | 634 | damnum |
| | 635 | modum et ordinem |
| | 636 | ignorat |

481—

The account of Samson follows the above passages immediately (B., cli or 124) in the Anonymous Pamphlet. The second Italian Pamphleteer sneers at this passage near the close of his own Pamphlet (p. 183).

| | | |
|---|-----|--|
| Sansone * * * | 640 | Samson * * * |
| soffri con animo intrepido la privazione degli occhi, e altre dolenti sciagure, | 644 | Blinded he was, * * * |
| | 645 | Intrepidly he took imprisonment, |
| | 646 | Gyves, stripes and daily labour at the mill: |
| ma quando si vidde destinato à servire di trastullo ne i luoghi publici, e che in quelli udiva le derisioni, e le beffe del Popolo, a'accese lo sdegno nel suo petto, con impeto tale, che tutto smanic, tutto furie moriatur, disse, anima mea cum Philistiin, | 647 | But when he found himself, l' the public place, |
| | 648 | Destined to make the common people sport. |
| | 649 | Disdain burned up with such an impetus |
| | 650 | I' the breast of him that, all the man one fire, |
| | 651 | Moriatur, roared he * * * |
| | 652 | Anima mea, with the Philistines! |
| e data una scoffa alle Colonne, che sostenevano il Palazzo, lo ridusse in ruina, multosque plures interfecit moriens, quam vivens occiderat. | 653 | So, pulled down pillar, roof, and death and all, |
| | 654 | Multosque plures interfecit, ay |
| | 655 | moriens |
| | 656 | quam vivens |
| | 657 | occiderat. |

482—RB., VIII, 660-73:

This pseudo-saying of Christ (cf. Note 393) and the inclosing text and comment are taken directly from the second Anonymous Pamphlet (B., cli or 124).

| | | |
|---|-----|---|
| e Christo medesimo, ancorche fosse mansuetissimo, e avesse somma sofferenza nel ricevere gli obbrobrii, e gli strapazzi senza mai lamentarsi, nientedimeno quando si senti toccato nell' honore, rispose Honorem meum nemini dabo; e è certo, che chiunque apprezza la reputazione, e l'honore, stima molto meno il morire huomo honorato sotto una mannaia, che vivere per molti secoli in faccia al mondo con vergogna, e dishonore | 660 | Out Lord Himself, made all of mansuetude, |
| | 661 | Sealing the sum of sufferance up, received |
| | 662 | Opprobrium, contumely and buffeting |
| | 663 | Without complaint: but when He found Himself |
| | 664 | Touched in His honour never so little for once, |
| | | * * * * * |
| | 666 | Honorem meum nemini dabo! |
| | | * * * * * |
| | 668 | And certainly the example so hath wrought, |
| | 669 | That whosoever, at the proper worth, |
| | 670 | Apprises worldly honour and repute, |
| | 671 | Esteems it nobler to die honored man |
| | 672 | Beneath Mannaia, than live centuries |
| | 673 | Disgraced in the eye o' the world. |

483—

The following quotation from the Epistle to the Corinthians and the citation from St. Ambrose are given in Spreti's argument (B., cxxxvii or 113):

| | | |
|---|-----|---|
| expedit mihi magis mori quam ut gloriam meam quis evacuet | 676 | Expedit mihi magis mori quam ut gloriam meam quis evacuet |
| Apostol. epist. I. ad Corinth. cap. 9. | 679 | See, ad Corinthenses: whereupon |
| Et D. Ambros. lib. 3. etc. | 680 | Saint Ambrose makes a comment, etc. |

Browning waggishly makes Arcangeli forget this citation (lines 681-3).

484—B., xxxi or 26:

quod si maritus de adulterio

uxoris non conquireretur
præsumitur Leno,

485—B., xxxii or 26:

cum Judicialiter
prosequeretur
illius Causam
ipsi accidit,
quod moverit risum, et cachin-
nosfere in omnibus
etiam sensatis, et cordatis
viris;non tamen dicam
in ipsismet Iudicibus.

486—B., cxxxiii or IIO:

Asserunt enim unanimiter
prædicti DD.,
quod mariti
reputantur viles, et cornuti
si propriis manibus
non sumunt
vindictam, sed
expectant illam fieri
per Iudices, qui summopere
rident,
et cachinantur

487—B., cxxxiii or IIO:

deliquit enim,
ut vulgi, et Doctorum Cen-
suram
evitaret,
et sic ne ammisso honori istam
quoque
Ignominiam superadderet

488—B., cxxxiv or III:

malus modus *eam* occidendi

489—B., cxxxiv or III:

nimis dolose
operatum fuisse

490—B., xix or 18:

qui, ut fraudarent
legitime vocatos
ad Fidelicommissum
partum *vilitissimum* supposuer-
unt

immemores Reos factos esse

ultimi supplicii

491—

The following point as to the excuse of *honoris causa* is given by Arcangeli (B., xxii or 19) and illustrated by the "nice decision of Dolabella" (Cf. RB., I, 230):

non semel
in contingentia facti
evaserunt Impunes
qui
iusto dolore moti
apposuerunt manus *etiam*
in innocentes;
Muller enim quædam Smirnea
Virum, et Filium ex eo con-
ceptum
interfecerat, ex quo
Vir perdidit filium suum

primi matrimonii,
accusata deinde
apud Dolabellam *Proconsulem*,
neque duabus cædibus
contaminatam liberare,
neque iusto dolore impulsam
condemnare voluit,

756 quod si maritus de adul-

terio non

757 conquireretur

758 presumitur leno

764 quum judicialiter

765 prosequeretur

766 *Guidonis* causam

767 accidit ipsi

768 quod risum moverit et

cachinnos

770 fere in omnibus

771 etiam sensatis et corda-

772 tis, men

773 ipsiamet in iudicibus

774 non tamen dicam

783 Asserunt enim unanimiter

784 doctores

785 quod mariti

786 viles, cornuti reputantur

788 si propriis manibus

789 non sumunt

790 vindictam, bat * * *

791 expectant illam fieri

792 per Iudices, qui summo-

794 pere rident
et cachinnantur.

795 deliquit enim

797 ut vulgi et doctorum

798 evitaret

800 et sic ne istam quoque

801 ignominiam

801 ammisso honori superad-

801 deret

822 malus modus occidendi

831 nimis dolose

832 fuisse operatum

875 qui ut fraudarent

876 legitime vocatos

877 ad Fidelicommissum

878 partum supposuerunt

879 immemores reos factos

881 esse
ultimi supplicii

881 ultimi supplicii

906 non semel

907 in contingentia facti

908 impunes evaserunt

909 qui

910 iusto dolore moti

911 apposuerunt manus

912 in innocentes.

914 Muller Smirnea quædam

916 virum et filium ex eo

918 conceptum

918 interfecerat, ex quo

919 vir filium suum perdi-

921 derat

921 matrimonii primi

922 deinde accusata

923 apud Dolabellam

924 nec duabus cædibus

925 contaminatam liberare

927 voluit.

928 nec condemnare

929 iusto dolore impulsam

sed remisit
ad Arcopagum
Sapientissimorum Iudicum

Cætum,

ubi, cognito de Causa,

responsum fuit,

ut ipsa, et Accusator

post centum Annos

redirent,

et sic

duplici Parricidio Rea,

quamvis etiam Innocentem

occidisset,

undequaue

evasit Impunis, ut refert

Valer. Max. Dictor. factor.

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sed remisit

931 ad Arcopagum

932 sapientissimorum judi-

933 cum

935 cætum

937 ubi, cognito de causa

938 responsum est

939 ut ipsa et accusator

940 redirent

941 post centum annos

943 et sic

945 duplici parricidio rea

946 quamvis etiam innocen-

947 tem

948 occidisset

949 undequaue

947 evasit impunis, See the

948 case at length

948 in Valerius, fittingly

948 styled Maximus,

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492—

The next citation from Cyriacus is made by Arcangeli at the close of his first argument (B., xxii or 20):

Similiter Uxor, quæ mandaverat

Homicidium Viri ob iustum

dolorem

ex denegatione debiti

matrimonialis

fuit pæcuniaria mulcta

punita, et ad temporalem

permanentiam

in Monasterio

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sed remisit

931 ad Arcopagum

932 sapientissimorum judi-

933 cum

935 cætum

937 ubi, cognito de causa

938 responsum est

939 ut ipsa et accusator

940 redirent

941 post centum annos

943 et sic

945 duplici parricidio rea

946 quamvis etiam innocen-

947 tem

948 occidisset

949 undequaue

947 evasit impunis, See the

948 case at length

948 in Valerius, fittingly

948 styled Maximus,

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498—

This claim of Guido that he did not order the assassins to kill the Comparini, but merely to mutilate them (cf. Note 526), was made on his first examination, but seems to have been abandoned by him when he was subjected to the torture of the vigil. The words *ut Doctorum utar verbis* are transferred from their place in the midst of the following passage to line 1576 of this monologue (B., xxxv or 28. Cf. B., 20):

| | | |
|---|------|--------------------------------|
| solummodo fassus fuit | 1221 | solummodo fassus est |
| dedisse mandatum, <i>ut Doctorum utar</i> | 1222 | dedisse mandatum |
| <i>verbis</i> , ad sfrisiandum dictam | 1223 | ad sfrisiandum, <i>dicam</i> , |
| <i>suam</i> Uxorem tantum | 1225 | uxorem tantum |

499—B., xxix or 24:

| | | |
|--|------|-----------------------------------|
| ex causa abscissionis genitalium de facto secuta | 1240 | ex causa abscissionis partium; |
| quia nempe id facientes reputantur | 1241 | qui nempe id facientes reputantur |
| inimici naturæ | 1242 | naturæ inimici |

The change of *quia* to *qui* is probably an accidental error rather than a conscious modification.

500—B., xviii or 17:

| | | |
|---------------------------|------|---------------------------|
| obiectum funditus corruit | 1248 | objectum funditus corruit |
|---------------------------|------|---------------------------|

501—B., lxvi or 54:

| | | |
|---------------------------------|------|--------------------------------|
| in domo, ac habitazione propria | 1256 | in domo ac habitazione propria |
|---------------------------------|------|--------------------------------|

Cf. Note 417.

502—

The following claim as to Guido's right to secure his wife's departure from the monastery for the purpose of killing her is made by the real Arcangeli (B., xviii or 16. Cf. Note 291):

| | | |
|--|------|----------------------------|
| nam quicquid sit | 1283 | nam quicquid sit |
| an de consensu ipsius Domini | 1284 | an de consensu nostro |
| Guidonis | | |
| educta esset | 1285 | a monasterio |
| a Monasterio, <i>de quo nullum verbum habemus in Processu.</i> | 1286 | educta esset |
| potuit id dissimulare, | 1287 | Potuissemus id dissimulare |
| ut aditum habere | 1289 | ut aditum habere |
| potuisset | 1291 | potuissemus |
| ad eam occidendam | 1292 | ad eam occidendam |

503—The following passage contains the only unmistakable error of Browning in the transfer of the book-Latin to his Poem. "via" for "ira" is doubtless a mistake in reading his own written notes (B., xxxiv or 28):

| | | |
|-------------------------------------|------|-----------------------------------|
| in quibus Rex Regum, et dominus | 1296 | in quibus assistit Regum Rex |
| dominantium assistit per essentiam, | 1297 | per essentiam |
| et nihilominus delinquens in eis | 1298 | et nihilominus in eis |
| ex iusta ira, et dolore excusatur | 1299 | ex justa via delinquens excusatur |
| | 1301 | |

504—B., lxvi or 54:

| | | |
|---|------|------------------------|
| mutatione vestimentorum, quo casu Homicidium dicitur commissum ex Insidiis. | 1318 | mutatione vestium |
| | 1320 | homicidium ex insidiis |

505—B., xxxii or 26:

| | | |
|---|------|------------------------------|
| ut commodius, et tutius de illa vindictam sumeret | 1325 | de illa ut vindictam sumeret |
| | 1327 | commodius * * * et tutius |

506—B., lxvi or 54:

| | | |
|--------------------------------------|------|-----------------------|
| Francisca erat sub potestate Iudicis | 1339 | our wife reposed |
| | 1340 | sub potestate iudicis |

507—B., lxxviii or 66:

| | | |
|-------------------------------|------|------------------------------------|
| accedit ad exasperandam pœnam | 1380 | accedit ad exasperationem criminis |
| | 1381 | |

508—B., cxxxix or 114:

| | | |
|--|------|--|
| et cum agatur de pauperibus, carceratis, | 1531 | et cum agatur de pauperibus carceratis |
| in eorum causis pietas | 1532 | in eorum causis pietas |
| triumphare debet, quia ipsi sunt | 1533 | triumphare debet, quia ipsi sunt |
| thesaurus Christi | 1534 | thesaurus Christi |
| | 1535 | |
| | 1537 | |

509—B., xxxvii or 29:

| | | |
|----------------------|------|----------------------|
| ista sua opinio est | 1558 | opinio |
| multum Cordi tenenda | 1559 | multum tenenda cordi |

510—B., xli or 33:

| | | |
|---|------|-------------------------|
| non dicuntur Mandatarii, sed Auxiliatores | 1562 | non dicuntur Mandatorii |
| | 1563 | sed auxiliatores |
| | 1564 | |

511—B., xlv or 34:

| | | |
|---|------|--|
| adeo honoris causa est efficax, ut non solum se diffundat in Mandatarios simplices, sed etiam in Mandatarios qualificados | 1566 | adeo honoris causa est efficax non solum se diffundat in mandatorios simplices sed etiam assassiniis qualitate |
| Assassinii qualitate | 1570 | |
| | 1572 | |
| | 1573 | |

512—B., clxxxii or 150:

| | | |
|---------------------------------------|------|---------------------------------------|
| quo nihil absurdius excogitari potest | 1633 | quo nihil absurdius excogitari potest |
| | 1634 | |

513—

The long peroration, over which the Arcangeli of the Poem is laboring (RB., VIII, 1637-1736), is taken bodily from B., cxxii or 103, where it is the peroration of the last and most important of the arguments of the real Arcangeli.

| | | |
|---|--|--|
| Cæterum enixe supplico, ut illustrissimo Domino meo benigna fronte, ac serenis oculis pendere placeat, quod Dominus Guido occidit, ut eius Honor tumulatus in infamia resurgeret. Occidit Uxorem, quia illi fuit opprobrio, et Illius Genitores qui postposita omni verecundia filiam repudiarent, et declarate non erubuerunt esse Meretricis genitam, ut ipse dehonestaretur cuius mentem perverterunt, et ad illicitos Amores non pellexerunt dumtaxat sed vi obedientiæ filialis cogerunt Occidit, ne scilicet amplius in dedecore viveret Consanguineis inuisus, a Nobilibus notatus, relictus ab Amicis, ab omnibus derisus Occidit | 1635 1637 1639 1640 1641 1642 1643 1644 1645 1647 1648 1649 1650 1651 1652 1653 1655 1656 1657 1658 1659 1660 1662 1663 1664 1665 1667 1668 1669 1670 1671 1673 1674 1675 1676 1677 1678 1680 | cæterum enixe supplico ut dominis meis benigna fronte et oculis serenis pendere placeat quod dominus Guido occidit ut eius honor tumulatus in infamia resurgeret occidit uxorem quia illi fuit opprobrio et genitores qui postposita verecundia filiam repudiarent atque declarate non erubuerunt meretricis genitam esse ut ipse dehonestaretur cuius mentem perverterunt et ad illicitos amores non dumtaxat pellexerunt sed vi obedientie filialis cogerunt occidit ne scilicet amplius in dedecore viveret inuisus a nobilibus notatus relictus ab amicis ab omnibus derisus occidit |
|---|--|--|

| | | |
|---|------|-------------------------------|
| in urbe | 1681 | in Urbe |
| nempe, quæ alias fuit spectata | 1682 | nempe quæ alias spectata est |
| Nobilem Matronam | 1684 | matronam nobilem |
| abluere maculas Pudicitiz | 1685 | abluere pudicitiz maculas |
| proprio sanguine, | 1687 | sanguine proprio |
| quas ipsa invita, et reluctantè filius Regis impexit, morte propria alterius culpam. et violentiam expiando Valer. Maxim., lib. 6, cap. 1, num. 1. Tit. Liv., lib. 1, Histor. | | |
| Et quæ vidit | 1688 | quæ vidit |
| Patrem undequaque | 1689 | patrem undequaque |
| impunem, | 1690 | impunem |
| et non illaudatum | 1691 | et non illaudatum |
| se pollutentem Parricidio | 1692 | sed pollutentem parricidio |
| filiz, | 1693 | filiz |
| ne raperetur ad stupra | 1695 | ne raperetur ad stupra |
| Valer. Maxim., ubi supra, num. 2. Tit. Liv. lib. 3. Histor. | | |
| tanti illi cordi fuit | 1696 | tanti illi cordi fuit |
| amittendi Honoris | 1697 | suspicio |
| suspicio, | 1698 | honoris amittendi |
| ut potius voluerit orbari | 1699 | ut potius voluerit filia |
| filia, | 1700 | orbari |
| quam illa incederet | 1701 | quam illa incederet |
| inhonesta, | 1702 | inhonesta |
| licet non sponte. | 1703 | licet non sponte |
| Occidit | 1704 | Occidit |
| in propria Domo, | 1705 | in propria domo |
| ut Adultera, eiusque Parentes | 1706 | ut adultera et parentes |
| consilii agnoscerent | 1707 | consilii agnoscerent |
| nullum locum, nullumque | 1708 | nullum locum, nullumque esse |
| asylum | 1709 | asylum |
| esse tutum, et impenetrabilem | 1710 | impenetrabilem |
| Honori læso, | 1711 | honori læso |
| neve ibi | 1712 | neve ibi opprobria |
| continuarentur opprobria, | 1713 | continuarentur |
| et Domus quæ turpium Testis | 1716 | et domus quæ testis |
| fuit, | | fuit turpium |
| esset et pœnz. | 1719 | esset et pœnz |
| Occidit, | 1719 | Occidit |
| quia alio modo | 1720 | quia alio modo |
| non poterat eius æxistimatio | 1721 | non poterat eius æxistimatio |
| læsa tam enormiter | 1723 | læsa tam enormiter |
| ducere cicatrices. | 1724 | ducere cicatrices |
| Occidit ut exemplum præberet | 1725 | Occidit ut exemplum præberet |
| Uxoribus | 1725 | uxoribus |
| Sacra Iura Coniugli religiose | 1725 | jura conjugii |
| esse servanda. | 1728 | esse servanda |
| Occidit denique, | 1729 | Occidit denique |
| ut pro posse honestus viveret, | 1730 | ut pro posse honestus viveret |
| sin minus | 1732 | sin minus |
| proptii Honoris | 1733 | proptii honoris |
| offensi | 1734 | offensi |
| commiseranda victima caderet. | 1735 | commiseranda victima caderet |

514—

The remaining Latin of Book VIII is adapted with free modification as follows:

| | |
|---------|---|
| 131 | tædas jugales inlit, sublit, from Catullus 64. 302: tædas jugales celebrare |
| 133 | connubio stabili sibi junxit. Ver., A. I, 73. |
| 898-900 | Crudum Priamum, Priamique pisinnos. |

Found as a scholium to Persius I, 4. The scholium reads as follows: *Labeo transtulit Iliadem verbum ex verbo ridicule satis. Eiusque est ille versus: crudum manduces Priamum, Priamique pisinnos.* (Iliad IV, 3.) That is: "Labeo translated the Iliad and Odyssey literally, but ridiculously enough. This verse is his, 'you may chew up Priam and his kids too.'" Possibly this scholium fell under the Poet's attention when he turned to his Persius to verify the quotation from Persius, Fourth Satire, lines 50-1, which are found at B., 170.

| | |
|--------|---|
| 1182 | Furor ministrat arma. Ver., A. I, 150, quoted also B., 124. |
| 1183-4 | Unde mi lapidem, unde sagittas. Hor. Sat. II, VII, 116. |
| 1200 | plus non vitiat. A medieval philosophic term |
| 1248 | objectum funditus corrui. A medieval term in logic |
| 1519 | haud passibus æquis. Probably suggested by Ver., A. I, 724, non passibus æquis |
| 1805-7 | ne sit marita quæ rotundioribus onusta mammis—baccis ambulet. Hor. Epodes 8, 113. |

515—

The book-Latin of Bottini's monologue is far more scant than that of the preceding one, but classical quotations are very common. As this latter feature is of rare occurrence in Browning's works, it must have been employed with dramatic significance here, to bring out the Fisc's pride in his Latinity.

B., ix or 10:

RB., IX:

| | | |
|-------------------------|-----|-------------------------|
| cohibita fuit | 249 | cohibita fuit |
| liberiores vitam ducere | 250 | vitam liberiores ducere |

516—B., clxxvii or 146:

| | | |
|-------------------------------|-----|-------------------------------|
| quod dato licito fine | 523 | quia dato licito fine |
| damnanda non sunt media | 524 | ad illum assequendum ordinata |
| ad illum assequendum ordinata | 525 | non sunt damnanda media |

Cf. RB., VIII, 1180, 1322, 1482.

517—B., cii or 85:

| | | |
|-----------------|-----|-----------------|
| nimis incongrue | 982 | nimis incongrue |
|-----------------|-----|-----------------|

518—B., clxxxii or 150:

| | | |
|---------------------------------|-----|---------------------------------|
| ego teneo contrariam sententiam | 983 | sententiam ego teneo contrariam |
|---------------------------------|-----|---------------------------------|

519—B., clxvii or 138:

| | | |
|----------------------------------|------|----------------------------------|
| subsistit | 1532 | subsistit |
| responsio tradita | 1533 | responsio tradita |
| quod non sit attendendus Titulus | 1534 | quod non sit attendendus Titulus |
| sed probatio | 1535 | sed probatio |
| ex Processu resultans | 1536 | resultans ex processu |
| et pœna per sententiam imposita | 1538 | et pœna per sententiam imposita |

520—

The following passages are quoted or adapted by the Fisc from classic sources:

| | |
|--------------|---|
| 145-7 | lene tormentum ingenio admoveo, plerumque duro. Hor., Odes, III, 21, 13. |
| 240-1 | Discedunt nunc amores, maneat amor. Unidentified. |
| 284-6 | novorum nascitur ordo. Ver., Ecl. IV, 5. |
| 340 | constans in levitate. Ovid, Trist. V, 8, 18. |
| 347-8 | Crede non illum tibi de accesta plebe delectum. Hor., Ode II, 4, 17. |
| 368 | heu prisca fides. Ver., A. VI, 878. |
| 405 | insanit homo (aut versus facit). Hor., Sat. II, 7, 117. |
| 465 | negatas artifex sequi voces. Persius, Prol. 11. |
| 681 | sororia saltem oscula. Ovid, Met. 4, 334; 9, 537. |
| 747-8 | ut vidii, ut perii. Ver., Ecl. VIII, 41. |
| 1000 | qui haud cunctando rem restituit. Ennius, quoted by Cicero, de Senec. IV, 10. "haud" is inserted by the Poet. |
| 1018 | Quid vetat. Hor., S. I, 10, 56. |
| 1227 | redeunt Saturnia regna. Ver., Ecl. IV, 6. |
| 1242 | infelix lolium, carduus horridus. Ver., Ecl. V, 37-9. |
| 1209 | forsan et hæc olim. Ver., A. I, 203. |
| 1325 | filius est quem nuptiz demonstrant. Unidentified. |
| 1333-5 | Cujum pecus? An Melibæi? Non sed Ægonis! Ver., Ecl. III, 1-2. |
| 1362-6 | Cur ego desperem fieri sine conjuge mater, et parere intacto dummodo casta viro? Ovid, Fasti V, 241-2. |
| 1376-7, 80-1 | Incipe, parve puer, risu cognoscere patrem. Nec anceps hære, pater, puero cognoscendo. Ver., Ecl. IV, 60. |
| 1506 | solvantur tabulæ (solventur). Hor., Sat. II, 1, 86. |
| 1504 | tenax proposito. Hor., Ode III, 3, 1. |

521—RB., IX, 214-5:

Sermocinando ne declamem ultra clepsydram. Medieval clerical saying.

522—

646 suis expensis nemo militat.
782-3 non idem semper dicere, sed spectare debemus.
(Proverbial sayings.)

523—B., ccxlviii or 196:

Incidit in Scillam cupiens evitare Charybdim,

An adaptation of line 301, of Book V, of the *Alexandreis* of Philippe Gaultier, a French Latin poet, 1513. The verse is founded on a Greek proverb derived from the *Odyssey*.

524—

There were evidently two stages of the trial of Guido and his fellow-assassins, as B., 192, speaks of "both presentations of the case," and B., 195, speaks of "the second setting forth of the case." The second stage of the trial was more learnedly and more skilfully fought, and the arguments are longer and more acute. They are based in part on the additional evidence secured by means of the torture of the vigil, and the Advocate of the Poor begins this part of the case with a sharp attack on the legality of the torture which had been decreed. Pamphlets 1-7 and 14 belong to the first stage of the trial. This is clearly proved, even in the case of pamphlet 14 (which was put in wrong order) by the references in the later pamphlets to paragraphs, or points of law, included in the earlier ones. Thus pamphlet 8 includes reference to pamphlet 14. Pamphlet 9 refers to pamphlet 8, while pamphlet 13 refers to pamphlet 9. In this way the order of the pamphlets in the trial is established as follows:

First stage: 1, 2, 3, 4, 5, 6, 7, 14.

Second stage: 8, 9, 11, 12, 13, 16.

Pamphlet 10, the first anonymous Italian narrative, is referred to by No. 13, and probably had just preceded it. All of these arguments must have been rapidly prepared, as they extend over only a month of time. In several places the lawyers speak of being pressed by the scantiness of time, and Gambi, in No. 12, speaks of having had but three hours to prepare.

525—RB., V, 12-3:

Noblemen were exempt, the vulgar thought,
From racking;

This point was made by Spreti and denied by Bottini (B., 166). Cf. RB., IV, 1625-8; VIII, 316-23.

526—RB., I, 979-80:

His limbs' late taste of what was called the Cord,
Or Vigil-torture more facetiously.

The torture of the vigil, which is used with such striking effect by the Poet in giving setting to the monologue of Guido Franceschini, was evidently not inflicted at the very beginning of the case, as the Poet imagines, but between the two stages of the legal argument (Note 524). For in the first stage there is continual argument concerning this torture as not yet having been inflicted, while in the second stage it is evident that the torture has been inflicted, and confession has followed, and the lawyers are merely accusing and defending the action of the court in permitting such painful torture.

It seems that the prosecution, being dissatisfied with the first confession under milder torture, in which Guido claimed he had given orders, not for death, but merely for mutilation (B., 20), had demanded the torture of the vigil to gain the whole truth. Spreti and Arcangeli (B., 28, 35) oppose this, and are refuted in turn by Gambi and Bottini (B., 52, 166). Evidently the court decreed the torture, and secured far more of a confession, and part of this is probably what is given in pamphlet 9, though the confessions as a whole have been lost. The further fact that the assassins were still further planning to murder Guido in turn (Note 338) was probably revealed in this way. Spreti at the beginning of his next argument, No. 9, sharply attacks the legality of the decree of torture (B., 105) and tries to have the evidence thus secured thrown out of the case. Bottini in turn (B., 135 *et seq.*) refutes him at length, and on the confession demands the infliction of the death penalty without further delay (B., 157).

The nature of this torment and its specific effect on Guido is not described in the Book, though the Pamphlet speaks of Baldeschi fainting under the cord (Note 390). It is merely referred to in such general terms as "the rigorous torment of the vigil." The Casanatense pamphlet (p. 223) gives a fuller and better account of the examination under threat of torture. To gain more definite knowledge on this point, Browning evidently traced the reference given at B., 28, to Farinacci, qu. 38, nu. 71, and had there found the full information he wanted. We have undoubted proof that he made such reference, for in lines 428-43 of Book VIII of the Poem he paraphrases Farinacci's text closely, as may be seen in Notes 386-9. Agostinelli seems to have been excepted from this torture (B., 114), *non fuerit denuo constitutus* (Note 315).

I quote the full text of Farinacci: (Prosperi Farinacii iuriconsulti romani, Praxis et Theorica criminalis Lugduni Horatius Cardon, 1606, Pt. I, Tome II, p. 201.)

The fifth and last among us is the *tormentum vigiliae*. At the time of Marsilius, who claims to be the inventor of this torment, the accused was placed upon a bench and made to sit there, and two men were present to watch lest he should fall asleep, and if he wished to sleep they aroused him and for forty hours would not permit him either to sleep or to rest. Finally, when he was promised rest within such a time, he was compelled to confess. Marsilius says of this torment that although it may seem ridiculous, no one is found so strong of spirit as to resist it, and this is elsewhere testified as being true. But in this evil day of ours, by some fate unknown to me, whether because of the severity of judges or the obstinacy of criminals, this torment has taken on a harsher and more cruel manner. For such a bench, which some call the Goat and others the Horse, is raised from the earth as high as a man's stature, and its top is not level, but is a little higher in the middle. * * * On the top of this bench the accused is placed, naked and bound to prevent him from falling, and with his hands bound behind his back and fastened by a rope that is on top of the bench, not otherwise than if he were to be tortured. And what is worse, his arms are held extended by the same rope, either entirely or in part, as the judge sees best. There the luckless accused * * * is detained for five or ten hours, and sometimes even longer at the Judge's discretion. And this is at the same time the torture both of the "cord" (*funis*) and of the vigil. What is more pitiable, out of a hundred men who have suffered this torment, I believe that not more than four or five have been martyrs, the rest indeed were confessors (*martyres, confessores*) for the torment is insupportable both by reason of the time and of the fearful pain and suffering. It is

quite true that I have seen it used only in the case of very atrocious crimes, such as the crime of *lesa majestas*, murder in the open streets, highway robbery, infamous nudity, and such crimes under ban. Therefore, in inflicting such torment, judges should see that it be much tempered, and above all they should see that the arms of the accused be not much extended. For such extension for a long time is in itself perilous, and many have died in this very torment on account of it, and very many more have fainted.

527—RB., X, 3 and 6:

and read a History.

* * * * *

Of all my predecessors, Popes in Rome:

Browning's method of creative art as seen in his use of the "old yellow book" leads me to a feeling that lines 32-150 of Book X are a free paraphrase of some actual history of the Papacy, which had fallen into the hands of the Poet. But I have not been able to find any such original for the passage as a whole. The facts given in these lines are such as are found in one or another of the historians, and in some cases even the form of expression is similar. Some extracts are given below with the line references to the corresponding lines of *The Ring and the Book*.

Luitprand, *Historia Gestorum Regum et Imperatorum sive Antopadoris*

No. 30. Concerning Pope Sergius who ordered them to drag Formosus from his tomb, and to depose him after he was dead.

When he [Sergius, a mistake for Stephen] had been established Pope, as one impious and ignorant of divine teaching, he commanded that Formosus be dragged from his tomb, and that he be placed in the Papal throne, clothed in his priestly robes (42-43). And to him he said: "Why when thou wert Bishop of Porto (46), moved by a spirit of ambition, usurpdst thou the universal throne of Rome?" (47). When these matters had been carried through, he commanded that the body be stripped of its sacred robes (81), that three fingers be cut off (84-5), and that it be cast into the Tiber (87-88). And all whom Formosus ordained, he reduced to their own rank (74-5), and reordained them.

No. 31. Concerning the body of Formosus, which was cast into the river by Sergius, and then found by fishermen, and saluted by the images of the saints.

But of what authority and of what religious life Formosus had been, we can gather from this: for when he was afterwards found by fishermen (112) and carried back to the church of St. Peter, the chief of the Apostles (120-1), certain images of the saints reverently saluted him when set in his place (124-6). For I have very often heard this from the most religious men in the city of Rome (122-3).

Fleury in his *Histoire Ecclesiastique*, Book 54, p. 579, gives the following account:

Pope Stephen the Sixth [sic] held then a council (33) in which he condemned Formosus, his predecessor. He had his body disinterred. Then they brought it into the midst of the assembly (38) and placed it on the papal throne (44), reinvested with his robes of office (43), and gave him an advocate to respond in his name (50-2). Then Stephen, speaking to the body as if it were still alive: "Oh, Bishop of Porto (46), tell me why thou hast carried thine ambition even to usurping the seat of Rome?" (47). Having condemned him (67-9), they despoiled him of his sacred robes (81), cut off his three fingers (84-5), and finally his head (86), and then cast him into the Tiber (88). Pope Stephen deposited all those whom Formosus had ordained (74-5), and ordained them anew.

p. 609. Theodore, who died only twenty days after his ordination (108), in that time left no stone unturned to achieve as far as possible the reunification of the Church. He called back the Bishops who had been driven from their sees, and reestablished the clerics ordained by Formosus and deposed by Stephen, and restored them to their sacred honors and the exercise of their functions. He caused them to carry back with due solemnity the body of Formosus into the burial place of the Popes (119-21); for it had been found by fishermen (112). And as they were bearing it in, many persons then present (122-3) assure us that the images of the saints saluted him in passing (125-6).

Sergius declared against Formosus and approved the procedure of Stephen VI (142-3); whose body [note it is Stephen's body] he had transferred ten years after his death and placed over him an honorable epitaph.

Floardoardus tells the matter as follows:

Then Stephen, the sixth [sic] on the sacred throne, who impresses us as harsh, but impressed his own contemporaries more harshly, who did cruel things to the living, but acted even more brutally toward the dead, and who attacked Falco with threats and Formosus with very deeds, assembled an unfortunate council, over which he presided harshly (34).

Platina's *Lives of the Popes*. Translated by Benham.

Stephen the VII [sic] * * * persecuted the memory of Formosus with such spite, that he abrogated his decrees, and rescinded all he had done. * * * Martin the historian says he hated him to that degree, that in a council which he held (33), he ordered the body of Formosus to be dragged out of the grave, to be stripped of his pontifical habit (81) and put into that of a layman, and then to be buried among secular persons, having first cut off those two fingers of his right hand, which are principally used by priests in consecration (85), and threw them into the Tiber. * * * Theodorus restored the decrees of Formosus and preferred his friends. * * * Theodorus in the twentieth (108) day of his Papacy died. * * * John removed to Ravenna (132), where, calling a synod of seventy-four bishops (133), he condemned all that Stephen had done (135) and restored the decrees of Formosus, declaring it irregularly done of Stephen to reordain those on whom Formosus had conferred holy orders.

Biographie universelle, XIII, 138.

Stephen VI had had for his predecessor Formosus, whose memory he wished to dishonor with such an excess of zeal as to betray both ignorance and ferocity (34). Formosus had been Bishop of Porto, and was called as Bishop of Rome: this translation from one see to another might still seem a criminal innovation. * * * Stephen called a council to have Formosus condemned. He had his body disinterred and brought into the assembly (38-9). They placed him upon the pontifical chair (44), re clothed in his robes of office (43) and gave him an advocate to respond in his name (52). Then Stephen, speaking to the dead body as if it were alive: "Why, oh Bishop of Porto, (46) hast thou carried thine ambition to the point of usurping the throne of Rome?" After he had been condemned, they despoiled him of his sacred robes (81) cut off three fingers, and then his head (85-6), and then cast it into the Tiber (88). This is the account of Luitprand (122) adopted by Fleury. Platina assures us that he cut off the two fingers which serve in consecration (85), which seems more probable.

528—RB., III, 96-7:

That doctrine of the Philosophic Sin:
Molinus' sect

B., 120, speaks of the "Doctrine of Molinos and the philosophic sin, which has been checked by the authority of the Holy Office." The historical and philosophical meaning of this reference may be found elsewhere. Browning has stated its significance in the world he is picturing (RB., I, 307-14):

* * * the sect for a quarter of an hour
I' the teeth of the world which, clown-like, loves to chew
* * * * *

Aught it may sport with, spoil, and then spit forth

Cf. RB., II, 126, 175-7; III, 34, 109, 989; V, 203, 223, 870, 1043, 1238, 1838; VI, 152, 473; VII, 769; VIII, 697, 1074, 1337; IX, 33, 566, 727, 1048, 1499; X, 1869, 2067; XI, 643, 2041; XII, 654.

529—RB., VII, 22-3:

the marble lion * * *
With half his body rushing from the wall,

This strange old sculpture, the "bestia," is familiar to the visitors at San Lorenzo in Lucina.

530—RB., VI, 462:

Those lancet-windows' jewelled miracle,—

Murray's Northern Italy: "The tall lancet windows of the Tribune (in the Duomo) have been compared and even preferred to the Five Sisters of York Minster."

531—RB., VII, 1215-8:

And Michael's pair of wings will * * *
* * * bear him from our picture where he fights
Satan,

Crowe & Cavalcaselle's *History of Painting in Italy*, Vol. I, p. 256: "In the bell room (of San Francesco of Arezzo), Spinello depicted scenes from the legend of the archangel Michael. * * * The archangel, poised on the dragon, is seen in the act of striking him, whilst on each side angels and demons struggle for mastery."

532—

Several matters of evidence, which are not included in the Summaries, are cited by folio in the arguments of the lawyers. This includes the testimony of the defendants themselves (B., 97, 107-8) of Maria Margherita (B., 88, 93) and several letters (B., 57-8, 90). Cf. also 94.

533—

"*Luogo di monte*": The name given to certain investments of Pietro Franceschini; it is thus defined in the *Vocabolario Universale Italiano*:

*Credito di somma determinata in un monte.
Monte, luogo pubblico dove si pigliano, o si pongono danari a
interesse*

534—

"*Praejudicium tertii*" (B., 55, 109, 137), the injury of the third party (some person outside the suit). That is, no judgment can be given condemnatory of, or injurious to, a person who is no party to the suit at bar.

*Praejudizio, e nocimento che procede da giudizio antici-
pato, e non amico, etc.
significare ogni altro danno * * * danneggiato dalle
false opinioni degli huomini.
Tommaso, Dizionario dei Sinonimi.*

535—

B., xi: *Visus et alloquium, tactus, post oscula, factum*. This seems to be an old proverbial saying. It is used by Porphyron in a scholium to Horace, *Carmina I*, 13, 16:

*elegantier, quia in quinque partes amoris fructus esse parti-
tuler dicitur: visu, alloquio, tactu, osculo, concubito.*

536—

In pursuance of the inquiry followed up in Note 527, I wrote to Mr. Robert Barrett Browning, and he sent me the following reply, which I quote with his consent because of certain matters of interest:

La Torre all' Antella, Florence, January 6, 1904.

My dear Sir:

I wish I were able to give you the information you ask me for, but my father's books are in Venice and I have not any here touching on the matter to refer to.

If Pope Stephen was, as you say, the Sixth and not the Seventh, of course the mistake is obvious and perhaps attributable to an unconscious slip of the memory, which with my father was not at its best in dates and figures. It is not likely that such an error should have appeared in any old work, such as he would have consulted; and certainly it was not caused by carelessness, for he was painstaking to a degree and had a proper horror of blundering, which is the word he would have used. I can only account for such a mistake as this—which he would have been the first to pronounce unardonable—by his absent-mindedness, his attention being at the moment absorbed by something else. Absent-mindedness was one of his characteristics, over instances of which he used to laugh most heartily. My father's intention, I know, was to be scrupulously accurate about the facts in this poem. I may tell you as an instance that, wishing to be sure that there was moonlight on a particular night, for descriptive purposes, he got a distinguished mathematician to make the nec-

essary calculation. [Note 185.] The description of the finding of the Book is without doubt true in every detail. Indeed, to this day, the market at S. Lorenzo is very much what it was then and as I can remember it. Not long ago, I myself bought an old volume there off a barrow.

The "yellow book" was probably picked up in June of 1860, before going to Rome for the winter—the last my father passed in Italy. As it had always been understood that the Book should be presented to Balliol, I went soon after my father's death to stay a few days with Jowett, and gave it to him.

In the portrait which hangs in Balliol hall I painted my father as he sat to me with the Book in his hands.

Nothing would have gratified him more than what you tell me about the interest with which his works are studied in America, and I need not say how much pleasure this gives me.

Believe me with many thanks for your kind letter,

Yours very sincerely,

R. BARRETT BROWNING.

To Mr. Charles W. Hodell.

537—RB., VIII, 404-12:

I wonder, all the same,
Not so much at those peasants' lack of heart;
But—Guido Francischini, nobleman,
Bear pain no better!

No such word concerning Guido's quailing at torture was found in Browning's sources, but that his imagination divined truly is proved by the Casanatense pamphlet (p. 223): "Far less torment than would seem to be necessary had to be applied to get the confession of the murderers and of Guido, who more than the rest had stood by his denial. But at the sight of torment he had not the heart to resist longer, and confessed fully."

538—

The motto from Pindar, *Olymp. I*, 112, which is found on the flyleaf of the Book just below the Poet's signature, was evidently chosen by the Poet when the subject had taken fast hold of him, and he began to see his great masterpiece. He evidently recognizes this as the opportunity of his life as an artist.

The passage occurs near the close of the song in honor of Hieron as victor in the chariot race in Syracuse, B. C. 472. The passage, as translated by Myer, runs as follows:

My part is to crown Hieron with an equestrian strain in Aeolian mood. * * * A God hath guard over thy hopes, O Hieron, and taketh care for them with a peculiar care, and if he fail thee not, I trust that I shall again proclaim in song a sweeter glory yet, and find thereto in words a ready way, when to the fair-shining hill of Kronos I am come. *Her strongest-winged dart my Muse hath yet in store*

Mr. Barrett Browning, in reply to this interpretation of the motto, has said: "I know he thought *The Ring and the Book* was going to be his greatest work, long before he had finished it; and he may have seen here—as you say—the great opportunity of his poetic career. This was probably when he began the poem, which he often told me while writing would be the longest in the English language. He was more and more interested in the work as it advanced."

539—RB., I, 1-31:

Do you see this Ring?
'Tis Rome-work, made to match
(By Castellani's imitative craft)
Etrurian circlets * * * * *
* * * 'Tis a figure, a symbol, say.

Mr. R. Barrett Browning has written as follows: "The ring was a ring of Etruscan shape made by Castellani, which my mother wore. On

it are the letters A E I. Ever after her death my father wore it on his watch chain." A friend of the poet has also stated that during his last illness the poet kissed the ring with all affection before composing himself for his night's rest. As he thinks of his Lyric Love he compares this ring with

Thy rare gold ring of verse (the poet praised)
Linking our England to his Italy!

R.B., XII, 873-4.

Such is the figure employed by the Italian poet Tommasei in the inscription for the tablet which the municipality of Florence placed on Casa Guidi in honor of the poetess they had come to revere.

540—

It has seemed well to give a transcript of the second and third letters [pp. ccxxxvii-x] as the handwriting is difficult to read.

Molt' Ille e M^{to} On^{le} Sig^r mio Pr. Oss.

(In full = Molto Illustre e Molto Onorevole Signor mio Padrone Osservantissimo.)

Le giustificazioni mandate non sono giunte in tempo perchè hoggi finalm^{te} dopo tanti contrasti è stata eseguita la giustizia del pouero Sⁱ Guido con farli la testa, e i quattro sicari sono stati impiccati. La causa fù risolta Martedì, mà perchè s'era dedotto il chiericato, e per questo si pretendeva che quanto a lui non ui entrassi la uita dopo che s'era spedita stoffetta in Arezzo per hauerne le giustificazioni il Papa passò ieri il chirografo, e ha uoluto che oggi onninam^{te} si eseguisca. Già che è stata volontà di Dio, che egli paghi simil pena almeno con le scritte fatte se n'è ricavato che morì da galant' huomo, perchè oltre l'essere morto con coraggio e esemplarità è stato compassionato da ogni galant' huomo, e non hà perduto niente la casa sua in materia della reputazione. Vi è concorsa tutta Roma come puol credere, e non ui è stato riparo con tutto che si sia scritto forte, e non li sieno mancate raccomandazioni di gran conseguenza, perchè il Sig^r Ambasciatore dell' Imperatore ne parlò di proposito Martedì, conforme egli mi disse ieri' altro, e poi le cose sono precipitate in un subito.

Hò terminata la sua scrittura per la Cong^{re} del Concilio, e ogni volta che Monsig^{re} Segretario uogli portarla penso che siamo all' ordine. Io la prego à favorirmi di quelle copie del processo più presto che sia possibile, e quando il Can. Filippo non ne lasci l' adito fauorisca auuisarmelo perchè io possa pensare à altri passi uolendo una uolta uscire di questo imbroglio se possibile sarà e per fine resto con ruerirra.

D. V. S. Molt' Ille e Molt' Onle

Roma 22 Febb^o 1698.

Div^o e obi^o S^{re}

Gasparo del Torto.

[The letter is addressed:]

Al Molto Ill^{mo} e M^o Ecc^o Sig^r Mio Pron^o Col^{mo}

il Sig^r Francisco Cencini

Firenze

541—Letter III:

Molto Ill^{re} et Ecc^{mo} Sig^r Sig^r mio Pr. Col^{mo}

Martedì si propose la disgratlatiss^a ca' e la Cong^{re} del Governo risoluè—Dilata et ad mente^m—La mente era che si aspettassero le giustificazioni del Chiericato consaputo. Sù questa fauoreuole resoluz^o pigliarono fiato li Defensori e cominciarono à respirare li buoni Amici, quando mio Sig^r l'altra sera alle due di Notte motu proprio sottoscrisse il chirografo derogata al Chiericato quat^o si adducesse e alla minorità di vno delli Correi. Sottoscritto il Chirografo, si propalò per la Città tal noua, e con essa la certezza della Giustitia che è seguita hoggi dopo il pranzo dei cinque, cioè del pouero Sig. Guido con il taglio della Testa, e degl' altri quattro Correi con la forca. Non significo à V. S. Ecc^{ma} il mio dolore, poiche di q: ne potrà casere lei med. veridico testimonio.

Le giustificazioni sarebbero state di rileuanza grandiss^a mà non nel caso p. perchè mio S^{re} hà voluto così.

Accludo la posit^o del Fisco, mancandogli solo una risposta che inuiarò subito che mi sarà capitata acciò V. S. Ecc^{ma} habbia l'intera positione.

Hora che il Sig. Auuo^o del Torto è sbrigato dagl' Interessi p. potrebbe seruire V. S. Ecc^{ma} si nella Ca^a Matrimoniale si nell' altra del Gomez onde mi rimetto à tutto qll^o che V. S. Ecc^{ma} li scriuarà, pregandola sempre più d' incessanti comandi acciò perpetuam^o possa essere

Roma li 22. feb^o 1698.

Ser. Oss. e Ule

Di V. S. Ecc^{ma}

Carlo Ant^o Vgolinucci

LINE-INDEX TO ANNOTATIONS.

| Book I: | | Book I: | | Book II: | | Book II: | | Book III: | |
|---------|--------|----------|------|----------|------|-----------|------|-----------|------|
| line | note | line | note | line | note | line | note | line | note |
| 1-3I | 539 | 795 | 319 | 475 | 66 | 98I | 215 | 33 | 359 |
| 33 | I | 798 | 64 | 476 | 292 | 999-1000 | 217 | 34 | 528 |
| 85 | 10 | 799 | 303 | 486-9I | 49 | 1008 | 221 | 37 | 35I |
| 110-I | 13 | 819 | 365 | 487 | 48 | 1010 | 220 | 45-7 | 353 |
| 119 | 11 | 846 | 58 | 491 | 51 | 1021 | 222 | 51 | 53 |
| 120 | 366 | 873-4 | 57 | 497 | 96 | 1022 | 225 | 63 | 16 |
| 122-3I | 2 | 903 | 61 | 498-50I | 52 | 1022 | 226 | 67 | 17 |
| 136-9 | 3 | 904 | 60 | 504 | 98 | 1031 | 227 | 74 | 66 |
| 140 | I | 979-80 | 526 | 507-10 | 97 | 1040 | 228 | 96-7 | 528 |
| 145-6 | 4 | 1038-9 | 271 | 519-25 | 100 | 1044 | 229 | 109 | 528 |
| 146-7 | 5 | 1052 | 7 | 534-7 | 101 | 1060 | 255 | 115-26 | 63 |
| 148-9 | 6 | 1053 | 373 | 537-8 | 102 | 1068-9 | 230 | 132-3 | 74 |
| 150-2 | 7 | 1078-9 | 350 | 549-5I | 103 | 1071-4 | 231 | 133-4 | 65 |
| 165 | 367 | 1085 | 35I | 549-83 | 105 | 1083 | 255 | 159 | 68 |
| 165 | 368 | 1087-9 | 352 | 558 | 105 | 1116 | 215 | 170-1 | 74 |
| 169 | 408 | 1174 | 455 | 580 | 107 | 1131 | 244 | 179-229 | 107 |
| 177 | 374 | 1236 | 431 | 597 | 108 | 1133-8 | 235 | 180 | 101 |
| 179 | 376 | 1284 | 345 | 600 | 260 | 1135 | 253 | 180 | 102 |
| 199 | 377 | 1290-2 | 433 | 615-6 | 332 | 1140 | 246 | 192-3 | 64 |
| 213 | 378 | 1309-19 | 435 | 625-6 | 257 | 1145-7 | 235 | 194-6 | 107 |
| 222 | 379 | 1325 | 440 | 656-67 | 109 | 1148-9 | 245 | 208 | 105 |
| 222-3 | 381 | 1328 | 441 | 671-6 | 109 | 1159-60 | 246 | 251-3 | 50 |
| 224 | 382 | | | 684-6 | 112 | 1162-4 | 243 | 256-7 | 39 |
| 226-8 | 380 | Book II: | | 689-718 | 113 | 1177-87 | 271 | 260 | 79 |
| 229 | 479 | 17-101 | 57 | 721 | 113 | 1197-9 | 276 | 270-5 | 80 |
| 229 | 383 | 27 | 332 | 726-32 | 260 | 1198 | 277 | 311 | 311 |
| 230 | 491 | 29 | 399 | 742-4 | 263 | 1231 | 278 | 364 | 66 |
| 231 | 384 | 55 | 14 | 753 | 264 | 1239-59 | 257 | 396-40I | 83 |
| 232-6 | 385 | 59-70 | 85 | 755 | 255 | 1282-5 | 297 | 403-17 | 90 |
| 241 | 365 | 60 | 15 | 780-81I | 151 | 1287 | 266 | 412-4 | 50 |
| 245-6 | 427 | 74-8 | 88 | 801 | 131 | 1292 | 52 | 428-9 | 84 |
| 255 | 42 | 126 | 528 | 805-7 | 128 | 1297-1300 | 256 | 448-60 | 85 |
| 257-9 | 9 | 147-8 | 414 | 805 | 152 | 1323 | 285 | 457-8 | 15 |
| 274 | 428 | 154-6 | 39 | 806 | 32 | 1325-38 | 283 | 469-83 | 87 |
| 285 | 429 | 156 | 88 | 809-10 | 124 | 1342 | 286 | 470-6 | 88 |
| 307-14 | 528 | 175-7 | 528 | 833-4 | 127 | 1350-4 | 289 | 496-7 | 91 |
| 346 | 430 | 193-4 | 63 | 835 | 128 | 1361-6 | 292 | 509-11 | 92 |
| 350 | 442 | 195 | 64 | 861 | 125 | 1368-9 | 293 | 512-16 | 93 |
| 361 | 447 | 200-1 | 67 | 874 | 135 | 1383 | 299 | 521-39 | 95 |
| 362-3 | 448 | 203-4 | 66 | 875 | 139 | 1384 | 302 | 522 | 98 |
| 395-8 | 321 | 206-7 | 292 | 876 | 140 | 1389-90 | 306 | 529-36 | 100 |
| 405 | 20 | 211 | 68 | 879 | 141 | 1391-3 | 310 | 549-668 | 105 |
| 405 | 303 | 265 | 72 | 889 | 184 | 1394 | 312 | 555-65 | 102 |
| 553 | 50, 51 | 268 | 74 | 893 | 196 | 1406-31 | 321 | 566-82 | 103 |
| 565-8 | 94 | 275-6 | 17 | 894-5 | 198 | 1435 | 322 | 583-98 | 104 |
| 569-77 | 100 | 288-9 | 39 | 895-6 | 200 | 1438 | 342 | 646-51 | 260 |
| 571 | 49 | 292 | 50 | 905 | 196 | 1439 | 347 | 655 | 261 |
| 604-5 | 292 | 304 | 43 | 933-6 | 146 | 1464-5 | 345 | 670-80 | 263 |
| 606 | 319 | 332-4 | 49 | 938-4I | 35 | 1488-1503 | 403 | 681 | 264 |
| 619-24 | 321 | 344 | 77 | 945 | 192 | 1506-24 | 222 | 688 | 265 |
| 677 | I | 359-78 | 85 | 954 | 202 | 1537-9 | 56 | 702-10 | 46 |
| 689-90 | 8 | 380 | 87 | 956 | 193 | | | 712-37 | 112 |
| 691-4 | 9 | 385 | 343 | 959 | 195 | Book III: | | 721-37 | 121 |
| 694-5 | 12 | 404-5 | 90 | 966-7 | 210 | 7 | 348 | 738-71 | 112 |
| 783-4 | 45 | 413-5 | 77 | 972 | 211 | 9-10 | 349 | 751-3 | 114 |
| 784 | 44 | 429 | 94 | 975-6 | 219 | 18-9 | 353 | 776-87 | 121 |
| 792 | 300 | 462-525 | 95 | 979 | 216 | 31 | 303 | 799-803 | 303 |

| Book III: | | Book III: | | Book IV: | | Book IV: | | Book V: | |
|-----------|------|-----------|------|-----------|------|-----------|------|-----------|------|
| line | note | line | note | line | note | line | note | line | note |
| 811 | 359 | 1500-6 | 283 | 499-504 | 87 | 1354 | 308 | 764-5 | 100 |
| 828 | 194 | 1500-14 | 284 | 550-572 | 95 | 1356-7 | 304 | 765-7 | 109 |
| 899-901 | 156 | 1507 | 292 | 568 | 98 | 1360 | 311 | 768-74 | 105 |
| 908-11 | 235 | 1509-11 | 287 | 569-70 | 99 | 1361 | 316 | 777-8 | 262 |
| 912-3 | 178 | 1514 | 286 | 575-80 | 105 | 1363 | 317 | 834-43 | 112 |
| 916-8 | 179 | 1519 | 288 | 575 | 101 | 1364-6 | 318 | 842-3 | 114 |
| 927-30 | 245 | 1520 | 290 | 576 | 103 | 1369 | 292 | 870 | 528 |
| 949-52 | 233 | 1527-38 | 21 | 611-2 | 105 | 1371 | 320 | 896-902 | 123 |
| 957 | 251 | 1540-1 | 304 | 640-5 | 109 | 1371-2 | 321 | 938-46 | 128 |
| 960 | 246 | 1546-69 | 307 | 663-98 | 121 | 1373-4 | 323 | 948-9 | 133 |
| 967-9 | 135 | 1575 | 311 | 718-9 | 45 | 1377-9 | 324 | 949-50 | 134 |
| 970-89 | 139 | 1582-3 | 317 | 719 | 44 | 1382 | 325 | 989-91 | 196 |
| 989 | 528 | 1584-5 | 318 | 749-51 | 121 | 1385 | 327 | 992 | 200 |
| 997-8 | 137 | 1592 | 319 | 769-86 | 112 | 1390 | 328 | 993 | 198 |
| 1003 | 140 | 1596 | 292 | 770-2 | 114 | 1391 | 330 | 1003-5 | 170 |
| 1011 | 142 | 1597-9 | 321 | 778-84 | 113 | 1393-4 | 331 | 1012 | 187 |
| 1015-7 | 144 | 1605 | 303 | 782-4 | 122 | 1395 | 225 | 1013 | 188 |
| 1040-2 | 149 | 1607-11 | 293 | 799 | 135 | 1395-6 | 333 | 1016 | 146 |
| 1065 | 184 | 1620-21 | 323 | 801-6 | 139 | 1397 | 340 | 1020-3 | 189 |
| 1073-4 | 199 | 1622-3 | 324 | 801 | 140 | 1399-1403 | 341 | 1022 | 190 |
| 1087 | 192 | 1627 | 331 | 807-41 | 144 | 1402 | 342 | 1025 | 191 |
| 1095 | 170 | 1628-30 | 337 | 944 | 131 | 1405-10 | 346 | 1026 | 192 |
| 1097-1104 | 171 | 1631-4 | 339 | 960 | 214 | 1416-24 | 344 | 1028-9 | 193 |
| 1121-4 | 21 | 1635-6 | 341 | 960 | 217 | 1425-32 | 349 | 1038 | 196 |
| 1128-30 | 194 | 1638 | 342 | 963-4 | 148 | 1435-6 | 329 | 1039 | 202 |
| 1140 | 212 | 1641 | 348 | 967-77 | 156 | 1437 | 328 | 1043 | 528 |
| 1142-9 | 213 | 1670 | 259 | 996-7 | 180 | 1439 | 348 | 1044-5 | 194 |
| 1161-7 | 227 | 1671 | 280 | 1025-6 | 154 | 1446-9 | 355 | 1050-1 | 217 |
| 1175-6 | 180 | | | 1028-31 | 170 | 1449-52 | 356 | 1052-62 | 219 |
| 1187-8 | 218 | | | 1033-42 | 231 | 1453-4 | 357 | 1068-1117 | 222 |
| 1188-98 | 212 | | | 1047-59 | 233 | 1455 | 358 | 1068-70 | 403 |
| 1197-1201 | 219 | | | 1050-2 | 245 | 1465 | 360 | 1119 | 220 |
| 1204-8 | 196 | | | 1053 | 246 | 1470-1 | 361 | 1120 | 228 |
| 1209 | 202 | | | 1069-70 | 133 | 1478 | 362 | 1123-4 | 227 |
| 1231-2 | 218 | | | 1104-6 | 307 | 1493 | 257 | 1132-7 | 231 |
| 1259-60 | 217 | | | 1118 | 202 | 1509-17 | 294 | 1133 | 230 |
| 1260 | 221 | | | 1120-1212 | 222 | 1518-9 | 284 | 1140 | 253 |
| 1262-5 | 220 | | | 1121 | 255 | 1521-4 | 306 | 1141-9 | 236 |
| 1268-9 | 222 | | | 1126-9 | 223 | 1528-42 | 404 | 1142 | 237 |
| 1290 | 227 | | | 1156 | 217 | 1557 | 316 | 1146-9 | 238 |
| 1295-9 | 228 | | | 1156 | 221 | 1576 | 323 | 1147 | 239 |
| 1308-11 | 231 | | | 1159 | 220 | 1610-11 | 88 | 1148 | 240 |
| 1312-3 | 244 | | | 1176-7 | 196 | 1625-8 | 525 | 1148-9 | 241 |
| 1313 | 233 | | | 1178 | 198 | | | 1151 | 233 |
| 1315-6 | 114 | | | 1192-3 | 220 | | | 1165 | 270 |
| 1325 | 255 | | | 1213-4 | 269 | | | 1175-6 | 255 |
| 1329-33 | 256 | | | 1241-3 | 276 | | | 1189-90 | 516 |
| 1331-2 | 280 | | | 1242 | 277 | | | 1203-6 | 233 |
| 1334 | 270 | | | 1245-9 | 271 | | | 1218-22 | 271 |
| 1345-8 | 149 | | | 1303-4 | 256 | | | 1223-5 | 276 |
| 1356-9 | 121 | | | 1305-27 | 258 | | | 1238 | 528 |
| 1360-1 | 233 | | | 1305 | 259 | | | 1242-77 | 257 |
| 1405-6 | 276 | | | 1308-10 | 260 | | | 1247 | 266 |
| 1409-10 | 272 | | | 1311-4 | 262 | | | 1247-51 | 297 |
| 1409-13 | 271 | | | 1313 | 263 | | | 1295-1301 | 297 |
| 1427-38 | 266 | | | 1317-8 | 266 | | | 1308-18 | 298 |
| 1436 | 267 | | | 1320 | 267 | | | 1319-21 | 266 |
| 1445-62 | 257 | | | 1322 | 268 | | | 1327 | 283 |
| 1469-74 | 280 | | | 1323-5 | 269 | | | 1328 | 284 |
| 1480 | 297 | | | 1326-7 | 270 | | | 1329-30 | 289 |
| 1490 | 285 | | | 1331-7 | 280 | | | 1333 | 66 |
| 1491 | 276 | | | 1332 | 259 | | | 1335-7 | 292 |
| 1492-4 | 279 | | | 1350-1 | 284 | | | 1338-41 | 293 |
| 1495 | 282 | | | 1352 | 299 | | | 1343 | 259 |

| Book VIII: | | Book VIII: | | Book IX: | | Book X: | | Book XI: | |
|------------|----------|------------|------|-----------|------|-----------|------|----------|------|
| line | note | line | note | line | note | line | note | line | note |
| 822 | 488 | 1380-1 | 507 | 686 | 205 | 445-8 | 42 | 1332 | 139 |
| 824-30 | 396 | 1398-1408 | 280 | 689 | 207 | 452 | 51 | 1349 | 17 |
| 831-2 | 489 | 1425-6 | 281 | 698-701 | 209 | 532-43 | 76 | 1421 | 329 |
| 859 | 401 | 1477 | 399 | 720 | 194 | 543-5 | 46 | 1623-4 | 334 |
| 875-8 | 107 | 1482 | 516 | 727 | 528 | 603-13 | 121 | 1633 | 335 |
| 875-81 | 490 | 1500-8 | 316 | 735 | 218 | 650 | 233 | 1641 | 336 |
| 898-900 | 514 | 1519 | 514 | 741 | 213 | 659-64 | 215 | 1645 | 337 |
| 906-49 | 491 | 1521-2 | 422 | 747-8 | 520 | 696 | 220 | 1663-9 | 294 |
| 950-61 | 492 | 1528-9 | 374 | 782-3 | 522 | 697-8 | 222 | 1665 | 296 |
| 983-95 | 403 | 1531-7 | 508 | 809-21 | 112 | 699-700 | 227 | 1666-7 | 295 |
| 983-95 | 222 | 1541-57 | 398 | 816-21 | 114 | 706-7 | 276 | 1729 | 359 |
| 999-1003 | 404 | 1558-9 | 509 | 837 | 235 | 710-4 | 257 | 1739-53 | 339 |
| 1003 | 405 | 1562-4 | 510 | 889-925 | 227 | 743 | 414 | 1844 | 44 |
| 1017-26 | 493 | 1566-73 | 511 | 982 | 517 | 752-74 | 307 | 1888-9 | 311 |
| 1040 | 494 | 1576 | 512 | 983 | 518 | 777-8 | 312 | 1932-4 | 47 |
| 1043-53 | 406 | 1578-83 | 423 | 993 | 135 | 788-90 | 317 | 2041 | 528 |
| 1056-70 | 407 | 1580-1 | 424 | 994 | 139 | 821-9 | 337 | 2161-6 | 47 |
| 1064 | 276 | 1589-1601 | 338 | 1000 | 520 | 825 | 43 | 2279 | 429 |
| 1071 | 317 | 1633-4 | 512 | 1018 | 520 | 834-40 | 294 | 2414-5 | 435 |
| 1073-90 | 318 | 1637-1736 | 513 | 1048 | 528 | 846-7 | 339 | | |
| 1074 | 528 | 1801 | 375 | 1133 | 222 | 849 | 341 | | |
| 1108-1381 | 408 | 1805-7 | 514 | 1149 | 134 | 855-68 | 338 | | |
| 1119-25 | 409 | | | 1150 | 233 | 861-3 | 338 | | |
| 1126 | 410 | | | 1195-1202 | 276 | 880-1 | 50 | | |
| 1130-8 | 411 | | | 1213-26 | 284 | 893-4 | 304 | | |
| 1141-2 | 495 | | | 1225 | 286 | 897-900 | 51 | | |
| 1146-52 | 412 | | | 1227 | 285 | 907 | 52 | | |
| 1157-64 | 413 | | | 1227 | 520 | 910-25 | 49 | | |
| 1162-4 | 496 | | | 1242 | 520 | 931-63 | 316 | | |
| 1170 | 414 | | | 1246-60 | 293 | 964 | 424 | | |
| 1172 | 497 | | | 1281 | 194 | 971-81 | 135 | | |
| 1176-7 | 415 | | | 1299 | 520 | 977-8 | 137 | | |
| 1180 | 516 | | | 1309-10 | 299 | 986-93 | 21 | | |
| 1182 | 514 | | | 1325 | 520 | 1073-81 | 21 | | |
| 1183-4 | 514 | | | 1333-5 | 520 | 1081-3 | 227 | | |
| 1185-7 | 222 | | | 1338-41 | 116 | 1454-70 | 139 | | |
| 1190-2 | 416 | | | 1341-66 | 302 | 1471-85 | 144 | | |
| 1193 | 29 | | | 1352-66 | 22 | 1499-1524 | 364 | | |
| 1194 | 31 | | | 1362-6 | 520 | 1869 | 528 | | |
| 1200 | 514 | | | 1366-81 | 520 | 1986-7 | 393 | | |
| 1221-5 | 498 | | | 1370 | 302 | 2067 | 528 | | |
| 1228-47 | 397 | | | 1371 | 20 | 2080-1 | 424 | | |
| 1240-2 | 499 | | | 1406 | 425 | 2108-11 | 442 | | |
| 1248 | 500 | | | 1421 | 329 | | | | |
| 1248 | 514 | | | 1437-8 | 355 | | | | |
| 1250-6 | 417 | | | 1462-4 | 363 | | | | |
| 1256 | 501 | | | 1466-73 | 360 | | | | |
| 1264 | 286 | | | 1476-91 | 361 | | | | |
| 1266-7 | 288 | | | 1499 | 528 | | | | |
| 1267-8 | 291 | | | 1506 | 520 | | | | |
| 1283-92 | 502 | | | 1518-21 | 272 | | | | |
| 1296-1301 | 503 | | | 1527-38 | 274 | | | | |
| 1315-7 | 446 | | | 1532-8 | 519 | | | | |
| 1315-20 | 418 | | | 1545-55 | 275 | | | | |
| 1318-20 | 504 | | | 1564 | 520 | | | | |
| 1322 | 516 | | | | | | | | |
| 1325-7 | 505 | | | | | | | | |
| 1337 | 528 | | | | | | | | |
| 1339-40 | 419, 506 | | | | | | | | |
| 1352 | 57 | | | | | | | | |
| 1373-6 | 420 | | | | | | | | |
| 1378 | 421 | | | | | | | | |
| 1379 | 259 | | | | | | | | |

| Book IX: | | Book X: | | Book XI: | |
|----------|------|---------|------|-----------|------|
| line | note | line | note | line | note |
| 33 | 528 | 3-6 | 527 | 1-2 | 433 |
| 132 | 365 | 32-150 | 527 | 24 | 434 |
| 145-7 | 520 | 212 | 431 | 32 | 436 |
| 214-5 | 521 | 216 | 4 | 45-6 | 42 |
| 240-41 | 520 | 217 | 5 | 52 | 42 |
| 249-50 | 515 | 283-5 | 431 | 123 | 436 |
| 262-3 | 135 | | | 186-258 | 441 |
| 262-3 | 139 | | | 433 | 437 |
| 276-8 | 98 | | | 471-4 | 324 |
| 284-6 | 520 | | | 643 | 528 |
| 298-301 | 123 | | | 969 | 66 |
| 335-75 | 128 | | | 1154 | 66 |
| 340 | 520 | | | 1195 | 98 |
| 347-8 | 520 | | | 1198-1201 | 100 |
| 368 | 520 | | | 1217 | 105 |
| 380 | 134 | | | 1225 | 109 |
| 381 | 133 | | | 1277 | 292 |
| 405 | 520 | | | 1331 | 135 |
| 445-8 | 247 | | | | |
| 448-60 | 248 | | | | |
| 461-3 | 249 | | | | |
| 465 | 520 | | | | |
| 468 | 233 | | | | |
| 473-4 | 247 | | | | |
| 476-7 | 250 | | | | |
| 501 | 156 | | | | |
| 523-5 | 516 | | | | |
| 538-45 | 252 | | | | |
| 541 | 162 | | | | |
| 541 | 163 | | | | |
| 559-61 | 170 | | | | |
| 566 | 528 | | | | |
| 566-8 | 174 | | | | |
| 569 | 426 | | | | |
| 602 | 28 | | | | |
| 625-35 | 129 | | | | |
| 646 | 522 | | | | |
| 653-8 | 200 | | | | |
| 681 | 520 | | | | |

| Book XII: | |
|-----------|------|
| line | note |
| 106 | 442 |
| 113-5 | 443 |
| 118-23 | 433 |
| 124 | 434 |
| 128 | 437 |
| 129-30 | 435 |
| 132-4 | 438 |
| 135-7 | 439 |
| 139-44 | 440 |
| 139 | 345 |
| 146 | 442 |
| 150-63 | 440 |
| 167 | 444 |
| 173-91 | 445 |
| 192-6 | 45 |
| 198-202 | 446 |
| 225 | 12 |
| 229 | 2 |
| 230 | 5 |
| 231 | 12 |
| 239-88 | 450 |
| 245 | 432 |
| 258 | 430 |
| 272 | 449 |
| 275-6 | 448 |
| 311-2 | 442 |
| 363 | 451 |
| 367-8 | 452 |
| 417 | 437 |
| 425 | 365 |
| 446-9 | 453 |
| 654 | 528 |
| 672-701 | 364 |
| 688 | 20 |
| 708 | 455 |
| 715-6 | 454 |
| 719-23 | 294 |
| 752-67 | 456 |
| 757-67 | 457 |
| 781 | 20 |
| 822-4 | 47 |
| 873-4 | 539 |

SUBJECT-INDEX.

Reference-numbers are to be interpreted as follows: In plain Arabic the reference is to note-numbers; in Roman, to pages of the Old Yellow Book; in Arabic preceded by p., to pages of the Essay.

- Acciaiuoli, Cardinal, 433
Advocatus Pauperum, 370
 Aelian, 385
 Arcangeli, Giacinto, 375, p. 271
 his peroration, 513
 letter of, 9, 450, ccxxxv, and p. 241
 Art form of *The Ring and the Book*, p. 249
 Baldeschi, Alessandro, 390
 fragment of deposition, cxxx
 Agostinelli, Biagio, 315
 fragment of deposition, cxxix
 Ambrose, St., 394, 483
 Angelica, affidavit of, 110, xlix
 Baldi, Monna, 53
 Baldo, 382
 Bartolo, 382
 Bernard, St., 480
 Bishop of Arezzo:
 Pompilia appeals to, 139
 his departure for Rome, 176
 letter of, 143, xci-ii
 Borsi, called Venerino, 205
 imprisoned for helping flight, 207
 tried in Arezzo, v
 deposes to kissing in coach, 206
 is dismissed, 208, viii
 Bottini, Giovanni Battista, of the Fisc, 368, p. 272
 sophistry concerning love-letters, 247
 kisses in coach, 209
 clandestine visits, 170, 174
 sleeping potion, 197; theft, 200
 Browning, Mrs., in Pompilia, p. 281
 Browning, R. B., 536, 185, p. 230
 Caponsacchi, Giuseppe Maria, 26-34, and pp. 286-9
 Guido's first jealousy of, 128
 Pompilia appeals to, 149, 150
 Guido's further jealousy, 151, 152
 plans going to Rome, 153
 receives letter by Maria Contenti, 154
 responds, 160
 further letters, 167
 charged with clandestine visits to Franceschini home, 170
 speaks with Pompilia at the window, 177-9
 shrinks from the undertaking, 182
 hesitates two days, 181
 his reasons for accompanying Pompilia, 179
 arrival at Castelnuovo, 211
 laic garb, 217
 Guido faces him, 219
 his defiance, 220
 denies love-letters, 242-4
 Caponsacchi, Giuseppe Maria—continued
 tried for flight and adultery, 269
 makes deposition, 34, lxxxviii
 condemned to three years at Civita, 271, xcix
 accused of visiting Comparini home, 293
 his name used by Guido to gain admittance to Comparini home, 321
 Carriage awaits fugitives, 192
 Castelnuovo:
 fugitives reach, 184, 210-12
 spend the night there, 215
 overtaken by Guido, 219
 arrested by the authorities of, 222, 226, 229
 imprisoned at, 254
 Pompilia's letter to her father from this prison, clv
 Castrensis, 398
 Celestino, Fra:
 ministers to dying Pompilia, lvii
 deposition as to her innocence, 353-5, lvii
 Cenci, Beatrice, ci, p. 248
 Cencini, Francesco, 9, 12, p. 238
 letters addressed to, ccxxv-ix
 Christ, pseudo-saying of, 393, 482
 Civita Vecchia, Caponsacchi condemned to, 271, xcix
 Classic quotations used or adapted by poet, 514, 520
 Clemente, Porta San, 189
 Comfit-throwing at theatre, 131
 Comparini, the:
 their social and financial condition, 63, 67, 69, 70
 go to Arezzo, 94
 in Arezzo, 95-9
 threatened by the Governor of, 147
 return to Rome, 100
 dwell on Strada Paolina, 292
 corpses exposed to view, 57
 Comparini, Pietro, p. 285
 financial troubles, 71, 72, 73
 refuses Guido's proposal for his daughter, 84
 indignation at the marriage, 87
 in Arezzo, 97
 sues for recovery of dowry, 260
 appeals suit, 264
 his will, clvi
 assumes cost of Pompilia's maintenance, 287
 death of, 324
 Comparini, Violante, 65, p. 285
 plans marriage for Pompilia, 74
 approached by Abate Paolo, 79

- Comparini, Violante—continued
 cajoles Pietro, 81
 carries through the secret marriage, 87
 quiets Pietro's indignation, 88
 in Arezzo, 96
 reveals that Pompilia was not her daughter, 103
 her motive in the pretense, 107
 death of, 323
- Contenti, Maria Margherita, 54, 171
 brings letter to Caponsacchi, 154
- Conti, Canon Giovanni Battista, 35
 his death, 36
 Pompilia seeks his assistance, 145
- Convertites, *Santa Maria Magdalena Converteritarum*, 276, 277, 351, 364
- Cyriacus, 492
- Dagger of Guido, 414
- Decrees of court:
 banishing Caponsacchi, 271, xcix
 conveying Pompilia to the home of the Comparini, 284, clv
 establishing her innocence, 456, 457, cclix
- Divorce suit brought by Pompilia, 266
- Divorce suit considered by Guido, 297
- Dolabella, 491
- Domus pro carcere*, 286, clv
- Dowry:
 Pietro sues to recover, 260, p. 243
 confirmed to Pompilia, 263
 suit appealed, 264
- Dowry of Pompilia, 91
- Farinacci, 386, 526
- Fellow-assassins:
 their names, 312
 hired by Guido, 311
 plot to slay Guido, 338
- Fidei commissum*, 69
- Fisc (*Fiscus Reverendae Camerae Apostolicae*), 368
- Flight from Arezzo, 184
 manner of, 187-195
- Franceschini coat of arms, 47
- Franceschini, Donna Beatrice, 44, 49, 117
- Franceschini, Canon Girolamo, 51, 52
- Franceschini, Guido, p. 275-9
 portrait of, p. 243
 his birth, 44
 rank, 38
 greed, 46
 personal appearance, 45
 clerical orders, 42
 service of cardinal, 39
 forges false statement of properties, 82
 the clandestine wedding, 85
 jealousy against Caponsacchi, 151, 152
 threat because of comfit-throwing, 132
 pursues fugitives, 202
 faces Caponsacchi at Castelnuovo, 219
 attacked by Pompilia, 227
 forges love-letters, 233
 charges Pompilia with theft, 201
 with giving opiate, 196
 returns to Arezzo, 256
 seeks divorce from Pompilia, 297
 sneers suffered by, 257
 angered by child's birth, 306
- Franceschini, Guido—continued
 hires assassins, 311, 312
 reaches Rome, 317
 lies in wait, 318
 his dagger, 414
 uses Caponsacchi's name at Comparini's door, 321
 escapes after murder, 333-42
 fails to get passport, 337
 fellow-assassins plot to slay, 338
 imprisoned, 345, 347
 tried for murder, 365, p. 244
 fragment of his deposition, cxxvii
 sentenced to death, 427, p. 246
 final ministrations to, 433-7
 carried to execution, 438-40
 execution, 444-5
- Franceschini, Abate Paolo, 50
 forwards the marriage, 80
 letter from Pompilia, lv, lxxxvii
 manages Guido's lawsuits, 256
 certificate of his power of attorney, clvii
 appeals to Pope, 280
 receives moneys, 200
 authorizes Pompilia's return to Comparini home, 288
 his disgrace, 305
 leaves Rome, 304
 part in planning the murder, 305
- Franceschini, Count Tommaso, 48
- Gaetano, 20
 born, Dec. 18, 299
 hidden away, 309
- Gambassini, minority of, 424
- George, St., 184
 in Caponsacchi, 28, p. 288
- Gomez, case of, 451
- Governor of Arezzo:
 Pompilia appeals to, 135
 threatens the Comparini, 137, 147
 letter to Abate Paolo Franceschini, 138, lxxxi-ii
- Gregory, St., 477
- Guillichini, Signor:
 Pompilia appeals to, 146
 tried and condemned, 295, v, vii, p. 244
- Half Rome*, 55, 56, 90; p. 240, 251, 254
- Handkerchief as signal, 183
- Honoris causa*, 399
- Horse Inn, 189, 191
- Jerome, St., 476
- Judith, 426
- Lamparelli, 112
- Laesa Majestas*, 420
- Lauria, Cardinal François, 50, 85, 88
- Lawyers in *The Ring and Book*, p. 271
- Lawyer's monologues, p. 252
- Letter from Pompilia to Abate Paolo, 112, 113, 114, lv, lxxxvii
- Letters in the book, 9, ccxxxv-ix
- Lorenzo in Lucina, San, 14, 24, 57, 85, 351, 529 and p. 256
- Love-letters, 121, 150, 169, xcii-xcix
 found at Castelnuovo, 231
 their contents, 157, 236-41
 a forgery, 233
 Bottini's sophistry concerning, 247

- Luogo di monte*, 533
 Mannaia, 441
Maria Magdalena Convertitarum, 276
 Marriage, the, 76-81
 Marzi-Medici, Vicenzo, Governor of Arezzo, 136
 Matthaëus, 396
 Merlucchia, 340-341
 Molinès, 262
 Molinos, 528
 Motto, from Pindar for the Book, 538, p. i, p. 230
 Murder qualified by assembling men, 409
 by forbidden arms, 413
 by home-breaking, 417
 by disguise, 418
 by insult to law, 419-20
 Murder trial, 365, pp. 244, 245
 Nerli, Cardinal, 39
 Old Yellow Book:
 its name, 1
 title-page, 2
 motto from Pindar, 538, i, p. 230
 its contents, 4, 5, p. 238
 size, 10
 printing by Papal Press, 6
 order of pamphlets, 524
 its history, p. 236
 collected by Cencini, 9, 12
 Browning's peculiar interest in it, p. 246
 his fidelity to it, p. 255
 Opiate, 196, 238, 241
Other Half Rome, 59, 75, 90, p. 240, 251, 254
 Ottoboni, Curate, 25
 Pallavicino, Monsignor, 7
 Panciatichi, Cardinal, 433
 Panimolle, 397
 Pasquini, Minority of, 424
 Patrizi, 346
 Paul, St., 383, 483
 Piazza del Popolo, 442
 Plot of assassins to slay Guido, 338
 Poisoning, Pompilia's fear of, 133
 Pompilia, pp. 280-5
 her name, 14
 baptismal record, 14, clv
 parentage and birth, 103, 105
 witnesses to parentage, 261
 clandestine wedding, 85
 abuse suffered in Arezzo, 116
 dowry retained, 263
 letter to Abate Paolo, 112-4, lv, lxxxvii
 explanation of letter, liv
 Guido accuses her, 123-8, 173
 tells of comfit-throwing, 131
 appeals to Bishop, 139-42
 to Governor, 135-8
 to Confessor Romano, 144
 to Conti, 145
 to Guillichini, 146
 to Caponsacchi, 149, 150
 speaks to Caponsacchi, 177-9
 suffers two days delay, 181
 takes clothes and trinkets, 199-200
 attacks Guido at Castelnuovo, 227, p. 284
 arrested, 222
 imprisoned, 255
 Pompilia—continued
 letter written from prison, 19, clv
 tried for flight and adultery, 269
 accused of theft, 201
 affidavit as to flight, 18, lvi, lxxxii
 declaration as to arrival at Castelnuovo, 212
 unable to write, 235, 248
 removed from Scalette, 283
 returns to Comparini, 284
 bond to keep home as prison, clv
 sues for divorce, 266, p. 244
 tried and condemned in Arezzo, 294, v-viii, p. 244
 assassinated, 325-9
 miraculously survives four days, 348, 349
 dying hours, 354-9
 dying moments reported by Fra Celestino, lvii
 death record of, 24, 351, p. 280
 decree of court clearing her reputation, 456, 457, cclix, p. 245
 Browning's attitude toward, p. 282
 her beauty, 16, p. 281
 love for Caponsacchi, p. 283
 drawn in part from Mrs. Browning, p. 281
 drawn from the Virgin Mary, 281
 Pope Innocent XII, 62, p. 270
 appealed to by Abate Paolo, 280
 returns appeal, 281
 refuses final appeal for Guido's life, 430
 reading from Papal history, 527
 Post horses refused Guido, 335
Praejudicium tertii, 534
 Prisons, New:
 Caponsacchi and Pompilia imprisoned there, 255
 Guido imprisoned, 345
Processus fugæ, 112, 232-234, 269
Procurator Pauperum, 374
 Pursuit of the assassins, 333-342
 Qualifying circumstances of murder, 408-20
 Quotations adapted from the Book, 461-513
Reverenda Camera Apostolica, 6
 Ring, the, 539
 Romano, Pompilia appeals to, 111, 144
 Rota, Tribunal of the Sacred, 262
 Samson, 481
 Scalette, 276
 Scaliger, 391
 Secondary source, p. 207-13, p. 242
 Sentence against Guido, p. 246
 Signature of Justice, Tribunal of, 262
 Slandorous pamphlets, 109
 Solomon, 479
 Spirito, Porta San, 193
 Spreti, Desiderio, 370
 Stinche, 294
 Theodoric, 384
 Tighetti, 353, p. 245
 Tommati, A. C., 7, 262
 Torrione, 189
 Venturini, Signor, 7, 270, 456
 Vigil, torture, 386-9, 526, p. 254
 Vittiano, 311
 Vittoria, Via, 66

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